

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1133.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

TOM MOSLEY AND DAN HOGAN.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF OKLAHOMA.

INDEX.

	Original.	Print.
Original citation with acceptance of service.....	1	1
Original writ of error with clerk's return.....	3	2
Indictment.....	6	3
Record of arraignment.....	80	45
Demurrer to indictment.....	81	46
Order demurrer assigned for hearing March 17, 1913	82	46
Order striking from assignment calendar.....	83	47
Record of hearing on demurrer April 1, 1913.....	84	47
April 2, 1913—Demurrer sustained—		
Government gives notice of appeal—		
Defendants held on their own recog-		
nizance pending appeal.....	85	47
Petition for writ of error.....	86	48
Assignment of errors.....	88	49
Order allowing writ of error.....	92	51
Præcipe for record.....	93	51
Election and designation of record.....	94	52
Clerk's certificate to transcript.....	95	52

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1 In the District Court of the United States for the Western District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN error, vs. TOM MOSLEY AND DAN HOGAN, DEFENDANTS.	}	No. 855.
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Citation.

By the Honorable John H. Cotteral, judge of the District Court of the United States for the Western District of Oklahoma in the eighth circuit, to Tom Mosley and Dan Hogan, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States of America, to be holden in the city of Washington, District of Columbia, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Oklahoma, wherein the United States is appellant and you are appellee, and you are to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the city of Oklahoma City, in the western district and eighth circuit above named, this 18th day of April, in the year of our Lord one thousand nine hundred and thirteen, and of the independence of the United States the one hundred and thirty-seventh.

JOHN H. COTTERAL,

United States Judge holding a District Court of the United States for the Western District of Oklahoma in the eighth circuit.

2 Due and proper service and the receipt of a copy of the within citation is hereby admitted and acknowledged this the 19th day of April, A. D. 1913.

E. J. GEDDNY,

GEO. H. GIDDINGS,

Attorneys for Defendants, Appellees.

24 (Indorsed:) No. 855. In the District Court of the United States for the Western District of Oklahoma. United States of America, plaintiff, plaintiff in error, vs. Tom Mosley and Dan Hogan, defendants. Citation. Filed April 19, 1913. Arnold C. Dolde, clerk, by Frank T. McCoy, deputy.

2

UNITED STATES VS. TOM MOSLEY AND DAN HOGAN.

3

In the District Court of the United States for the Western
District of Oklahoma.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN
error,
v.

No. 855.

TOM MOSLEY AND DAN HOGAN, DEFENDANTS.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the district judge
of the United States for the Western District of Oklahoma,
greeting:

Because, in the record and proceedings, as also in the rendition
of the judgment of a plea which is in the district court, before you,
between the United States of America and Tom Mosley and Dan
Hogan, a manifest error hath happened, to the great damage of the
said United States of America, as is said and appears by its com-
plaint.

We, being willing that such error, if any hath been, should be duly
corrected, and full and speedy justice done to the parties aforesaid
in this behalf,

Do command you, if judgment be therein given, that then, under
your seal, distinctly and openly, you send the record and proceedings
aforesaid, with all things concerning the same, to the Supreme Court
of the United States of America, together with this writ, so that you
have the same in the said Supreme Court in the city of Washington,
District of Columbia, within thirty days from the date hereof, and
that the record and proceedings aforesaid being inspected, the said
Supreme Court may cause further to be done therein, to correct

4 that error, what of right and according to the law and custom
of the United States ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the
Supreme Court of the United States, this 18th day of April, in the
year of our Lord one thousand nine hundred and thirteen, and of
the independence of the United States the one hundred and thirty-
seventh.

[SEAL.]

ARNOLD C. DOLDE,

*Clerk of the District Court of the United States of America of the
Western District of Oklahoma in the eighth circuit.*

The foregoing writ is allowed.

JOHN H. COTTERAL,

*Clerk of the District Court of the United States of America, of the
Western District of Oklahoma.*

5

UNITED STATES OF AMERICA,

Western District of Oklahoma, ss:

In obedience to the command of the within writ, I herewith trans-
mit to the Supreme Court of the United States of America a duly

certified transcript of the record and proceedings in the within
entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the District Court of the United States for the Western District of Oklahoma in the Eighth Circuit, at office in the city of Guthrie, in said district, this 12th day of May, A. D. 1913.

[SEAL.]

ARNOLD C. DOLDE,

ARNOLD C. DOLDE,
Clerk U. S. District Court, Western District of Oklahoma.

54 (Indorsed:) No. 855. In the District Court of the United States for the Western District of Oklahoma. United States of America, plaintiff in error, vs. Tom Mosley and Dan Hogan, defendants. United States of America, ss. Filed April 18, 1913. Arnold C. Dolde, clerk.

6 In the District Court of the United States in and for the West-
ern District of Oklahoma.

Indictment for conspiracy to injure and oppress citizens of United States in free exercise and enjoyment of rights and privileges secured by Constitution and laws of United States in violation of section 19, penal code.

THE UNITED STATES OF AMERICA, PLAINTIFF, }
vs. } No. —.
TOM MOSELEY and DAN HOGAN, DEFENDANTS. }

At the January term of the District Court of the United States for the Western District of Oklahoma, begun and held at the city of Guthrie, in said district, on the sixth day of January, in the year of our Lord one thousand nine hundred and thirteen, the grand jurors of the United States of America within and for said district having been duly summoned, impanelled, sworn, and charged to inquire into and true presentment make of all public offenses against the laws of the United States of America committed within said district, do, upon their oaths aforesaid, in the name and by the authority of the United States of America, find and present:

That heretofore, to wit, on the fifth day of November, A. D. one thousand nine hundred and twelve, at and within Blaine County, in the State of Oklahoma and within the Western District thereof, and within the jurisdiction of this court, the following-named persons, to wit, A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, Will Shanley, C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, Garfield Jefferson, H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, J. W. Russworm, J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, H. H. Bartumus, Troy Stansberry, Fred Seigfried, R. Huffman, Dr. Tracy, E. E. Willis, J. H. Hadsell, J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hy-

sell, Sam Clark, A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, J. Erlenmaier, George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, Ples Bush, B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, George Hempel, George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, were then and there residents and citizens of the United States of America, and of the State of Oklahoma and of the county of Blaine therein, and were then and there legally qualified electors and voters with the right and privilege secured to them and each of them by the Constitution and the laws of the United States, to vote and to exercise the right of suffrage in the election of a legally qualified person for a Member of the Congress of the United States of America of and for the second congressional district of Oklahoma, at a general election then and there being legally held for such purpose in said State of Oklahoma, and in said Blaine County therein, and in said second congressional district therein, and in the western district of Oklahoma and within the jurisdiction of this court, and such persons and each and all of them, as aforesaid, then and there also having the necessary, proper, and legal qualifications requisite in the State of Oklahoma and under the laws of the State of Oklahoma for electors of the most numerous branch of the legislature of the said State of Oklahoma, and the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor,

8 Tim Foley, and Will Shanley, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Arapaho, in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid, then and there residing in said Arapaho Township, and who had then and there, at such election aforesaid, in said Blaine County, and in said Arapaho Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Arapaho Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number eight (8) ;

And the said C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, and Garfield Jefferson, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of West Dixon, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said West Dixon

precinct, and who had then and there, at such election aforesaid, in said Blaine County, and in said West Dixon precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said West Dixon precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-eight (28);

9 And the said H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, and J. W. Russworm, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of East Dixon, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said East Dixon precinct, and who had then and there, at such election aforesaid, in said Blaine County, and in said East Dixon precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said East Dixon precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number nine (9);

And the said J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, and H. H. Bartumus, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Carlton, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Carlton Township, and who had then and there, at such election aforesaid, in said Blaine County, and in said Carlton Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Carlton Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-nine (29);

10 And the said Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, and J. H. Hadsell, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors , then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of Canton, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Canton precinct, and who had then and there at such election aforesaid, in said Blaine County, and in said Canton precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Canton precinct was then and there a duly and legally and properly

apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-three (23);

And the said J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, and Sam Clark, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Cedar Valley, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Cedar Valley Township, and who had then and there at such election aforesaid, in said Blaine County, and in said Cedar Valley Township, voted and cast their ballots for and in the election of such Member
11 of Congress as aforesaid, which said Cedar Valley Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number six (6);

And the said A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, and J. Erlenmaier, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of East Lincoln, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said East Lincoln precinct, and who had then and there at such election aforesaid, in said Blaine County, and in said East Lincoln precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said East Lincoln precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number thirty (30);

And the said George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, and Ples Bush, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of West Lincoln, in said Blaine

County, and then and there being and constituting all of the
12 qualified electors, as aforesaid, then and there residing in said West Lincoln precinct, and who had then and there at such election aforesaid, in said Blaine County, and in said West Lincoln precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said West Lincoln precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number ten (10);

And the said B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Watonga, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Watonga Township, and who had then and there at such election aforesaid, in said Blaine County, and in said Watonga Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Watonga Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty (20);

And the said David Enlow, D. Schubert, Adam Fisher, J. J. Keller, Conrad Bill, and George Hempel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then
13 and there being and constituting such qualified electors, as hereinbefore set out, of the township of Flynn, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Flynn Township, and who had then and there at such election aforesaid in said Blaine County, and in said Flynn Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Flynn Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number thirteen (13);

And the said George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Logan, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Logan Township, and who had then and there at such election aforesaid, in said Blaine County, and in said Logan Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Logan Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twelve (12); and that there was then and there held in said Blaine County, and within the said second congressional district of the State of Oklahoma as aforesaid,
14 and at and within all of said voting precincts as aforesaid, a general election for the purpose of electing a

legally qualified person for Member of the Congress of the United States of America, for and from the second congressional district of the State of Oklahoma, of which said congressional district the said voting precincts as aforesaid were then and there a part, and that at such election, and in said Blaine County, the defendants herein, Tom Moseley and Dan Hogan, were then and there officers of said election in this, that the said Tom Moseley and the said Dan Hogan, together with one W. C. Broady, then and there were the legally appointed, constituted, and qualified and acting members of the county election board of Blaine County, Oklahoma; and that he, the said Tom Moseley, was then and there the duly appointed, qualified, and acting secretary thereof, and he, the said Dan Hogan, was then and there the duly appointed, qualified, and acting chairman thereof, and then and there with said W. C. Broady constituted the said county election board of Blaine County, Oklahoma; and that they, the said Tom Moseley and Dan Hogan, then and there being as such officials and two of the members of said election board and the majority thereof, and whose more full, true, and correct names are to the grand jurors unknown, in the said county of Blaine, State of Oklahoma, and in the western district of Oklahoma, and in the second congressional district of Oklahoma, and within the jurisdiction of said court, did then and there wickedly, wilfully, knowingly, maliciously, corruptly, unlawfully, and feloniously agree, combine, confederate, and conspire together and with each other to injure and oppress the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, and Will Shanley, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers
15 persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Arapaho, in said Blaine County, known and described in said county as precinct number eight (8), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, and Garfield Jefferson, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the precinct of West Dixon, in said Blaine County, known and described in said county as precinct number twenty-eight (28), who had then and there, at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, and J. W. Russworm, whose more full, true, and correct names are to the grand jurors unknown, and many

other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the precinct of East Dixon, in said Blaine County, known and described in said county as precinct number nine (9), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and the said J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, and H. H. Bartumus, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Carlton, in said Blaine County, known and described in said county as precinct number twenty-nine (29), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, and J. H. Hadsell, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the precinct of Canton, in said Blaine County, known and described in said county as precinct number twenty-three (23), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and the said J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, and Sam Clark, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Cedar Valley, in said Blaine County, known and described in said county as precinct number six (6), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid; and said A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Hausenmeier, and J. Erlenmaier, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the precinct of East Lincoln, in said Blaine County, known and described in said county as precinct number thirty (30), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and

said George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, and Ples Bush, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the precinct of West Lincoln, in said Blaine County, known and described in said county as precinct number ten (10), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, and J. P. Roetzel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and

there being and constituting all of such qualified electors, as
18 hereinbefore set out, of the township of Watonga, in said Blaine County, known and described in said county as precinct number twenty (20), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, and George Hempel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Flynn, in said Blaine County, known and described in said county as precinct number thirteen (13), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Logan, in said Blaine County, known and described in said county as precinct number twelve (12), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; in the free exercise and enjoyment of the right and privilege secured to them, and to each of them, by the Constitution and laws of the United States, to vote and to exercise the right of suffrage in the election
19 of a legally qualified person for Member of the Congress of the United States of America for and from the said second congressional district of Oklahoma, at such general election described as aforesaid, and then and there being held for such purpose,

in said Blaine County, and in said precincts as aforesaid; and that they, the said Tom Moseley and Dan Hogan, then and there officers of said election as aforesaid, for the purpose of illegally and unlawfully injuring, oppressing, and preventing the said persons named as aforesaid, and each and all of them, from freely exercising and enjoying the lawful right to vote at said election for a legally qualified person for such Member of the Congress of the United States of America and from freely exercising and enjoying the right of suffrage in the election of such Member of Congress at said election then and there held for such purpose, after such persons hereinbefore named as such qualified electors, and each and all of them, had cast their ballots as aforesaid for such Member of Congress of the United States of America, and caused same to be placed in the legal and proper ballot boxes in the said precincts hereinbefore named, and in said Blaine County and at said election, and that thereafter, when the election certificates and returns of the results of said election for such Member of Congress from the said several precincts hereinbefore named and described, which were to be returned and delivered to the said county election board of Blaine County, and to the said Tom Moseley and Dan Hogan, then and there two of the members and the majority of the said county election board, together with all the election returns and certificates from each and all of the other remaining precincts in said Blaine County, for the purpose of being reviewed and canvassed by the said county election board and by the said Tom Moseley and the said Dan

20 Hogan, two of the members and the majority thereof; and that after all such precinct election returns and certificates of the results of said election of such Member of Congress from all the precincts in said Blaine County had been legally, regularly, and properly issued, made, and returned by the legally appointed, constituted, and proper precinct election officer or officers of all such precincts to the said county election board of said Blaine County, and to the said Tom Moseley and Dan Hogan, two of the members and officers and the majority of said county election board, should and would wilfully, unlawfully, feloniously, wickedly, and in bad faith, and irrespective of the fact that the said precinct election returns and certificates of the results of said election of said Member of Congress so returned and reported as aforesaid from said precincts hereinbefore described and designated by name and number would or might be lawful and legal and proper and regular upon their face, wholly disregard each and all of the said certificates of the results of said election and returns of the votes and ballots cast in the said precincts as aforesaid, at said election, for such Member of Congress, and in said Blaine County, and would and should then and there, in bad faith, wickedly, intentionally, designedly, and without authority of law, and corruptly fail, neglect, and refuse to list, return, consider, canvass, and compute as a part of the total election returns and results from Blaine County of said election of such Member of Congress aforesaid, each and all of the

said returns, certificates, reports, and results from the said several precincts, in said Blaine County, as hereinbefore alleged, to wit, election precincts apportioned, constituted, and hereinbefore
21 described and designated as Arapaho Township, precinct number eight (8); West Dixon, precinct number twenty-eight (28); East Dixon, precinct number nine (9); Carlton Township, precinct number twenty-nine (29); Canton, precinct number twenty-three (23); Cedar Valley Township, precinct number six (6); East Lincoln, precinct number thirty (30); West Lincoln, precinct number ten (10); Watonga Township, precinct number twenty (20); Flynn Township, precinct number thirteen (13); and Logan Township, precinct number twelve (12), a more particular, definite, or certain description of said precincts being to the grand jurors unknown; and that they, the said Tom Moseley and the said Dan Hogan, as such officers and members of said election board, should and would then and there, with the unlawful and evil purpose and intent aforesaid, wholly fail, neglect, and refuse to return or certify to the State election board of the State of Oklahoma the returns and the reports and results of the votes and ballots cast for such Member of Congress at the said election in said Blaine County, and and in said precincts, and each and all of them as aforesaid, and would and should then and there wholly omit from the certificate and return of the results of said election of such Member of Congress in said Blaine County, to be thereafter made and returned and certified to the said State election board of the State of Oklahoma by the said county election board of Blaine County, Oklahoma, and by them, the said Tom Moseley and the said Dan Hogan, two of the members and the majority thereof, all of the returns, reports, and results of the election of such Member of Congress in said precincts as aforesaid, and also omit from such return and certificate as aforesaid, to be by the said county election board of said Blaine County, and by the said Tom Moseley and the said Dan Hogan, two
22 of the members and the majority thereof, returned and certified to the said State election board of the State of Oklahoma, the entire result of all the votes and ballots cast for such Member of Congress at said election in said precincts as aforesaid; and they, the said Tom Moseley and Dan Hogan, thereby and by the means aforesaid, should and would unlawfully wilfully, illegally, wrongfully, and feloniously injure and oppress the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, Will Shanley, C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, Garfield Jefferson, H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, J. W. Russworm, J. H. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, H. H. Bartumus, Troy Stansberry, Fred Seigfried, R. Huffmann, Doctor Tracy, E. E. Willis, J. H. Hadsell, J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, Sam Clark, A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, J. Erlenmaier, George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H.

Geeslin, A. M. Nash, Ples Bush, B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzell, David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, George Hempel, George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and each and all of them and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all such qualified electors as aforesaid, who had then and there at such election aforesaid, in said Blaine County, and in said precincts aforesaid, cast their ballots for and in the election of such Member of Congress as aforesaid, 23 in the free exercise and enjoyment of a right and privilege secured to said persons and to each of them, by the Constitution and laws of the United States, to wit, the right and privilege, at said election hereinbefore alleged, of voting and exercising the right of suffrage in the election of a duly qualified person as a Member of the Congress of the United States of America of and from the second congressional district of the State of Oklahoma; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present:

That heretofore, to wit, on the fifth day of November, A. D. one thousand nine hundred and twelve, at and within Blaine County, in the State of Oklahoma, and within the western district thereof, and within the jurisdiction of this court, the following-named persons to wit: A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, Will Shanley, C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, Garfield Jefferson, H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, J. W. Russworm, J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, H. H. Bartumus, Troy Stansberry, Fred Seigfried, R. Huffman, Dr. Tracy, E. E. Willis, J. H. Hadsell, J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, Sam Clark, A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusemeier, J. Erlenmaier, George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, Ples Bush, B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzell, David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, George Hempel, George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to to grand jurors unknown, were then and there residents and citizens of the United States of America,

and of the State of Oklahoma, and of the county of Blaine, therein and were then and there legally qualified electors and voters with the right and privilege secured to them and each of them by the Constitution and the laws of the United States, to vote and to exercise the right of suffrage in the election of a legally qualified person for a Member of the Congress of the United States of America, of and for the second congressional district of Oklahoma, at a general election then and there being legally held for such purpose in said State of Oklahoma, and in said Blaine County therein, and in said second congressional district therein, and in the western district of Oklahoma, and within the jurisdiction of this court, and such persons, and each and all of them, as aforesaid, then and there also having the necessary, proper, and legal qualifications requisite in the State of Oklahoma, and under the laws of the State of Oklahoma, for electors of the most numerous branch of the legislature of the said State of Oklahoma, and the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, and Will Shanley, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out, of the township of Arapaho, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said

25 Arapaho Township, and who had then and there, at such election aforesaid, in said Blaine County, and in said Arapaho Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Arapaho Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number eight (8).

And the said C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, and Garfield Jefferson, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of West Dixon, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said West Dixon precinct, and who had then and there at such election aforesaid, in said Blaine County, and in said West Dixon precinct, voted and cast their ballots for and in the election of such Member of Congress, as aforesaid, which said West Dixon precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-eight (28).

And the said H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, and J. W. Russworm, whose more full, true, and correct names are to the grand jurors unknown, and many other

26 and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of East Dixon, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said East Dixon precinct, and who had then and there, at such election aforesaid, in said Blaine County, and in said East Dixon precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said East Dixon precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number nine (9).

And the said J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, and H. H. Bartumus, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Carlton, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Carlton Township, and who had then and there, at such election aforesaid, in said Blaine County, and in said Carlton Township, voted and cast their ballots for and in the election of such member of Congress as aforesaid, which said Carlton Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-nine (29).

And the said Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, and J. H. Hadsell, whose more full, true, and correct names are to the grand jurors unknown, and
 27 many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of Canton, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Canton precinct, and who had then and there, at such election aforesaid, in said Blaine County, and in said Canton precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Canton precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-three (23).

And the said J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, and Sam Clark, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Cedar Valley, in said Blaine

County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Cedar Valley Township, and who had then and there, at such election aforesaid, in said Blaine County, and in said Cedar Valley Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Cedar Valley Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number six (6).

And the said A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, and J. Erlenmaier, whose more full, 28 true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of East Lincoln, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said East Lincoln precinct, and who had then and there, at such election aforesaid, in said Blaine County, and in said East Lincoln precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said East Lincoln precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number thirty (30).

And the said George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, and Ples Bush, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of West Lincoln, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said West Lincoln precinct, and who had then and there at such election aforesaid, in said Blaine County, and in said West Lincoln precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said West Lincoln precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number ten. (10).

29 And the said B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Watonga, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Watonga Township, and who had then and there at such election aforesaid, in said Blaine County, and in said Wa-

tonga Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Watonga Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty (20).

And the said David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, and George Hempel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Flynn, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Flynn Township, and who had then and there at such election aforesaid, in said Blaine County, and in said Flynn Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Flynn Township

30 was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number thirteen (13).

And the said George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Logan, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Logan Township, and who had then and there at such election aforesaid, in said Blaine County, and in said Logan Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Logan Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twelve (12); and that there was then and there held in said Blaine County, and within the said second congressional district of the State of Oklahoma, as aforesaid, and at and within all said voting precincts as aforesaid, a general election for the purpose of electing a legally qualified person for Member of the Congress of the United States of America, for and from the second congressional district of the State of Oklahoma, of which said congressional district the said voting precincts as aforesaid were then and there a part, and that at such election and in said Blaine County the defendants herein, Tom Moseley and Dan Hogan, were then and there officers of said election in this, that the said Tom Moseley and the said Dan Hogan, together with one W. C. Broady, then and there were the legally appointed, constituted, and qualified and

31 acting members of the county election board of Blaine County, Oklahoma; and that he, the said Tom Moseley, was then and there the duly appointed, qualified, and acting secretary thereof, and

he, the said Dan Hogan, was then and there the duly appointed qualified, and acting chairman thereof, and then and there, with said W. C. Broady, constituted the said county election board of Blaine County, Oklahoma; and that they, the said Tom Moseley and Dan Hogan, then and there being as such officials and two of the members of said election board and the majority thereof, and whose more full, true, and correct names are to the grand jurors unknown, in the said county of Blaine, State of Oklahoma, and in the western district of Oklahoma, and in the second congressional district of Oklahoma, and within the jurisdiction of said court, did then and there wickedly, wilfully, knowingly, maliciously, corruptly, unlawfully, and feloniously agree, combine, confederate, and conspire together and with each other to injure and oppress the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, and Will Shanley, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Arapaho, in said Blaine County, known and described in said county as precinct number eight (8), who had then and there, at said election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, and Garfield Jefferson, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the precinct of West Dixon, in said Blaine County, known and described in said county as precinct number twenty-eight (28), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said H. Hoskinson, P. P. Moreland, J. M. McClure, Frank Beals, A. Crawford, and J. W. Russworm, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the precinct of East Dixon, in said Blaine County, known and described in said county as precinct number nine (9), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and the said J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, and H. H. Bartumus, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of

Carlton, in said Blaine County, known and described in said county as precinct number twenty-nine (29), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, and J. H. Hadwell, whose more full, true, and correct names are to the grand jurors unknown,

and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore

33 set out, of the precinct of Canton, in said Blaine County, known and described in said county as precinct number twenty-three (23), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and the said J. H.

Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, and Sam Clark, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Cedar Valley, in said Blaine

County, known and described in said county as precinct number six (6), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said A. J.

Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, and J. Erlenmaier, whose more full, true, and correct names are to the grand jurors, and many other and divers persons whose names

are to the grand jurors, unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the precinct of East Lincoln, in said Blaine County,

known and described in said county as precinct number thirty (30), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said

George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, and Ples Bush, whose more full, true, and

34 correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting

all of such qualified electors, as hereinbefore set out, of the precinct of West Lincoln, in said Blaine County, known and described in said county as precinct number ten (10), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted

and cast their ballots for and in the election of such Member of Congress aforesaid; and said B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, and J. P.

Roetzel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are

to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Watonga, in said Blaine County, known and described in said county as precinct number twenty (20), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, and George Hempel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Flynn, in said Blaine County, known and described in said county as precinct number thirteen (13), who had then and there at such election aforesaid, in said Blaine County,

and in said precinct, voted and cast their ballots for and in
35 the election of such Member of Congress aforesaid; and said George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors, as hereinbefore set out, of the township of Logan, in said Blaine County, known and described in said county as precinct number twelve (12), who had then and there at such election aforesaid, in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; in the free exercise and enjoyment of the right and privilege secured to them and to each of them by the Constitution and laws of the United States, to vote and to exercise the right of suffrage in the election of a legally qualified person for Member of the Congress of the United States of America for and from the said second congressional district of Oklahoma, at such general election described as aforesaid, and then and there being held for such purpose in said Blaine County, and in said precincts as aforesaid, and that they, the said Tom Moseley and Dan Hogan, then and there officers of said election as aforesaid, for the purpose of illegally and unlawfully injuring, oppressing, and preventing the said persons named as aforesaid, and each and all of them, from freely exercising and enjoying the lawful right to vote at said election for a legally qualified person for such Member of the Congress of the United States of America, and from freely exercising and
36 enjoying the right of suffrage in the election of such Member of Congress at said election then and there held for such

purpose, after such persons hereinbefore named as such qualified electors, and each and all of them, had cast their ballots as aforesaid for such Member of Congress of the United States of America and caused same to be placed in the legal and proper ballot boxes in the said precincts hereinbefore named, and in said Blaine County, and

at said election, and that thereafter, when the election certificates and returns of the results of said election for such Member of Congress from the said several precincts hereinbefore named and described which were to be returned and delivered to the said county election board of Blaine County, and to the said Tom Moseley and Dan Hogan, then and there two of the members and the majority of the said county election board, together with all the election returns and certificates from each and all of the other remaining precincts in said Blaine County, for the purpose of being reviewed and canvassed by the said county election board and by the said Tom Moseley and the said Dan Hogan, two of the members and the majority thereof, and that after all such precinct election returns and certificates of the results of said election of such Member of Congress from all the precincts in said Blaine County had been legally, regularly, and properly issued, made and returned by the legally appointed, constituted, and proper precinct election officer or officers of all such precincts to the said county election board of said Blaine County, and to the said Tom Moseley and Dan Hogan, two of the members and officers and the majority of said county election board, should and would wilfully, unlawfully, feloniously, wickedly, and in bad faith, and irrespective of the fact that the said precinct election returns and certificates of the results of said election of said Member of Congress so returned and reported aforesaid from said precincts hereinbefore described and designated by name and number, would or might be lawful and legal and proper and regular upon their face, wholly disregard each and all of the said certificates of the results of said election and returns of the votes and ballots cast in the said precincts as aforesaid, at said election for such Member of Congress, and in said Blaine County, and would and should then and there, in bad faith, wickedly, intentionally, designedly, and without authority of law, and corruptly fail, neglect, and refuse to list, return, consider, canvass, and compute as a part of the total election returns and results from Blaine County of said election of such Member of Congress aforesaid, each and all of the said returns, certificates, reports, and results from the said several precincts in said Blaine County, as hereinbefore alleged, to wit, election precincts apportioned, constituted, and hereinbefore described and designated as Arapaho Township, precinct number eight (8); West Dixon, precinct number twenty-eight (28); East Dixon, precinct number nine (9); Carlton Township, precinct number twenty-nine (29); Canton, precinct number twenty-three (23); Cedar Valley Township, precinct number six (6); East Lincoln, precinct number thirty (30); West Lincoln, precinct number ten (10); Watonga Township, precinct number twenty (20); Flynn Township, precinct number thirteen (13); and Logan Township, precinct number twelve (12); a more particular, definite or certain description of said precincts being to the grand jurors unknown, and that they, the said Tom Moseley and the said Dan Hogan, as such officers and members of said election

board, should and would then and there, with the unlawful and evil purpose and intent aforesaid, wholly fail, neglect, and refuse to return or certify to the said election board of the State of Oklahoma the returns and the reports and results of the votes and ballots cast for such Member of Congress at the said election in said Blaine County, and in said precincts and each and all of them as aforesaid, and would and should then and there wholly omit from the certificate and return of the results of said election of such Member of Congress in said Blaine County to be thereafter made and returned and certified to the said state election board of the State of Oklahoma, by the said county election board of Blaine County, Oklahoma, and by them, the said Tom Moseley and the said Dan Hogan, two of the members and the majority thereof, all of the returns, reports, and results of the election of such Member of Congress in said precincts as aforesaid, and also omit from such return and certificate, as aforesaid, to be by the said county election board of said Blaine County, and by the said Tom Moseley and the said Dan Hogan, two of the members and the majority thereof, returned and certified to the said State election board of the State of Oklahoma, the entire result of all the votes and ballots cast for such Member of Congress at said election in said precincts, as aforesaid.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present that the said Tom Moseley and the said Dan Hogan, whose more full and correct names are to the grand jurors unknown, in the town of Watonga and in the county of Blaine, State of Oklahoma and within the western district of
39 Oklahoma, and within the jurisdiction of this court then and there being, did then and there wickedly, wilfully, knowingly, maliciously, corruptly, unlawfully, and feloniously, in pursuance of said conspiracy aforesaid, and to effect the object and common design thereof and as a part of said conspiracy, did thereafter, on or about the fourteenth day of November, A. D. 1912, cause to be held and hold a secret meeting of the said county election board of Blaine County, Oklahoma, at which said secret meeting of said county election board aforesaid, there was then and there present the said Tom Moseley, who was then and there the duly appointed, qualified, and acting secretary of said election board, and the said Dan Hogan, who was then and there the duly appointed, qualified, and acting chairman of the said election board, and other conspirators, whose names are to the grand jurors unknown, and at which said secret meeting of said election board as aforesaid, the said W. C. Broady, the third member of said election board, was not then and there personally present, and the said secret meeting as aforesaid, being then and there held without previous notice thereof to the said W. C. Broady, and without the knowledge or consent of the said W. C. Broady, and which said secret meeting of said election board, as aforesaid, was then and there being held in the manner aforesaid for the purpose of reviewing, canvassing, listing, and computing the total result of the election of such Member of Congress from

all the precincts in said Blaine County, and for the further purpose of returning and certifying the results of the election of such Member of Congress from all of the precincts of said Blaine County to the State election board of the State of Oklahoma, and

40 that the said Tom Moseley and the said Dan Hogan, two of the members and officers aforesaid, and the majority of said election board, without the consent, knowledge, or approval of the said third member of said election board, to-wit, W. C. Broady, did, at such meeting aforesaid, then and there unlawfully, wilfully, corruptly, wickedly, feloniously, and in bad faith disregard, fail, refuse, and neglect to review, list, compute, consider, and certify and return each and all of the results of said election of such Member of Congress and returns of the votes and ballots cast for such Member of Congress, in the following named and described precincts, to-wit, election precincts apportioned, constituted, and described and designated as Arapaho Township precinct number eight (8), West Dixon precinct number twenty-eight (28), East Dixon precinct number nine (9), Carlton Township precinct number twenty-nine (29), Canton precinct number twenty-three (23), Cedar Valley Township precinct number six (6), East Lincoln precinct number thirty (30), West Lincoln precinct number ten (10), Watonga Township precinct number twenty (20), Flynn Township precinct number thirteen (13), and Logan Township precinct number twelve (12), a more particular, definite, or certain description of said precincts being to the grand jurors unknown, although the said certificates of the results of said election of such Member of Congress and returns of the votes and ballots cast for such Member of Congress, in said precincts as aforesaid at said election for such Member of Congress and in said Blaine County, had then and there been legally, regularly, and properly

41 issued, signed, made and returned by the legally appointed and constituted and proper precinct election officials of each and all of said precincts, as aforesaid, and were then and there lawful, legal, proper, and regular upon their face and were then and there entitled to be reviewed, listed, and computed and returned and certified as a part of the total result of the election of such Congressman at such election in said Blaine County and were also then and there legally entitled to be included as a part of the result of said election as aforesaid in the certificate and return to be at such meeting aforesaid made, issued, returned, and certified by the said county election board and by the said Tom Moseley and the said Dan Hogan, two of the officers and members and the majority thereof, to the said State election board of the State of Oklahoma, and that the said Tom Moseley and the said Dan Hogan, as such members and officers of said county election board and the majority thereof, aforesaid, and at said meeting aforesaid, then and there wickedly, corruptly, wrongfully, feloniously, and in bad faith wholly failed, neglected, and refused to return or certify to the State election board of the State of Oklahoma, as a part of their certificate and return of the results of the election of such Member of Congress in said

Blaine County, and of the votes and ballots cast for such Member of Congress at such election in said Blaine County, all the returns, reports, and results of the votes and ballots cast for such Member of Congress at the said election in said Blaine County, and in said precincts hereinbefore described by name and number and each and all of them as aforesaid, and that they, the said Tom Moseley

42 and the said Dan Hogan, two of the officers and members of said county election board and the majority thereof, did then and there and at said meeting aforesaid, wilfully, unlawfully, wrongfully, corruptly, feloniously, and in bad faith make and prepare a certificate and return of the result of the vote for such Member of Congress at such election and in said Blaine County, and then and there wrongfully, feloniously, unlawfully, and in bad faith wholly omit from said return and certificate the entire returns, reports, and results of the votes and ballots cast in said precincts hereinbefore described by name and number for such Member of Congress at said election in said Blaine County, and which said return and certificate so illegally, unlawfully, feloniously, and wrongfully made and issued by the said Tom Moseley and the said Dan Hogan, as two of the members and officers and the majority of the said county election board, was then and there by them, the said Tom Moseley and the said Dan Hogan, transmitted and delivered, and caused to be transmitted and delivered, to the State election board of the State of Oklahoma and to one Ben W. Riley, who was then and there duly appointed, constituted, and acting secretary of the said State election board of the State of Oklahoma, and which said certificate and return as aforesaid, with the omissions therein as aforesaid of the votes and ballots cast for such Member of Congress, in said precincts aforesaid, in said election and in Blaine

County as aforesaid, did thereby become a part and parcel of
43 the official records of the said State election board of the State of Oklahoma and of the office of the secretary thereof and was thereafter considered and acted upon by the said State election board of the State of Oklahoma, in the canvas thereafter made by the said State election board of the votes and ballots cast for such Member of Congress at said election from the several counties embraced within the said second congressional district of the said State of Oklahoma, and they, the said Tom Moseley and Dan Hogan, thereby and by the means aforesaid, should and would unlawfully, wilfully, illegally, wrongfully, and feloniously injure and oppress the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, Will Shanley, C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, Garfield Jefferson, H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, J. W. Russworm, J. H. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, H. H. Bartumus, Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, J. H. Hadsell, J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, Sam Clark, A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusen-

meier, J. Erlenmaier, George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, Ples Bush, B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, David Enlow, D. Schubert, Adam Fisher, J. J. Keller, Conrad Bill, George Hempel, George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and each and all of them and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all such qualified electors as aforesaid, who had then and there at such election

44 aforesaid, in said Blaine County and in said precincts aforesaid, cast their ballots for and in the election of such Member of Congress as aforesaid, in the free exercise and enjoyment of a right and privilege secured to said persons and to each of them by the Constitution and laws of the United States, to-wit, the right and privilege at said election hereinbefore alleged, of voting and exercising the right of suffrage in the election of a duly qualified person as a Member of the Congress of the United States of America, of and from the second congressional district of the State of Oklahoma, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present:

That heretofore, to wit, on the fifth day of November, A. D. one thousand nine hundred and twelve, at and within Blaine County, in the State of Oklahoma, and within the Western District thereof, and within the jurisdiction of this court, the following named persons, to wit: A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, Will Shanley, C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, Garfield Jefferson, H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, J. W. Russworm, J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, H. H. Bartumus, Troy Stansberry, Fred Seigfried, R. Huffman, Dr. Tracy, E. E. Willis, J. H. Hadsell, J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, Sam Clark, A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, J. Erlenmaier, George M. Matlock, H. C. Lookabaugh,

45 S. A. Reichman, J. H. Geeslin, A. M. Nash, Ples Bush, B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, David Enlow, D. Schubert, Adam Fisher, J. J. Keller, Conrad Bill, George Hempel, George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, were

then and there residents and citizens of the United States of America, and of the State of Oklahoma and of the county of Blaine therein and were then and there legally qualified electors and voters with the right and privilege secured to them and each of them by the Constitution and the laws of the United States, to vote and to exercise the right of suffrage in the election of a legally qualified person for a Member of the Congress of the United States of America of and for the second congressional district of Oklahoma, at a general election then and there being legally held for such purpose in said State of Oklahoma and in said Blaine County therein and in said second congressional district therein and in the Western District of Oklahoma and within the jurisdiction of this court, and such persons and each and all of them, as aforesaid, then and there also having the necessary, proper, and legal qualifications requisite in the State of Oklahoma and under the laws of the State of Oklahoma for electors of the most numerous branch of the legislature of the said State of Oklahoma, and the said A. S. Baker, Henry

46 Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, and Will Shanley, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out of the township of Arapaho in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid, then and there residing in said Arapaho Township, and who had then and there at such election aforesaid, in said Blaine County, and in said Arapaho Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Arapaho Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County known and described in said county as precinct number eight (8);

And the said C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, and Garfield Jefferson, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out of the precinct of West Dixon in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said West Dixon precinct, and who had then and there at such election aforesaid, in said Blaine County, and in said West Dixon precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said West Dixon precinct was then and there a duly and legally and properly apportioned and

47 stituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-eight (28);

And the said H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, and J. W. Russworm, whose more full, true, and

correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out of the precinct of East Dixon in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid, then and there residing in said East Dixon precinct, and who had then and there at such election aforesaid, in said Blaine County and in said East Dixon precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said East Dixon precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County known and described in said county as precinct number nine (9);

And the said J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, and H. H. Bartumus, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out of the township of Carlton in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid, then and there residing in said Carlton Township, and who had then and there at such election aforesaid in said Blaine County and in said Carlton Township voted and cast their ballots for
48 and in the election of such Member of Congress as aforesaid, which said Carlton Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-nine (29);

And the said Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, and J. H. Hadsell, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the precinct of Canton, in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said Canton precinct, and who had then and there at such election aforesaid in said Blaine County and in said Canton precinct voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Canton precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-three (23);

And the said J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, and Sam Clark, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Cedar Valley, in said Blaine County,

and then and there being and constituting all of the qualified
49 electors as aforesaid then and there residing in said Cedar
Valley Township, and who had then and there at such election
aforesaid, in said Blaine County and in said Cedar Valley Township,
voted and cast their ballots for and in the election of such Member
of Congress as aforesaid, which said Cedar Valley Township was
then and there a duly and legally and properly apportioned and
constituted voting precinct in said Blaine County, known and de-
scribed in said county as precinct number six (6) ;

And the said A. J. Foster, I. N. Miller, W. D. Blair, Lew Bran-
non, H. Heusenmeier, and J. Erlenmaier, whose more full, true,
and correct names are to the grand jurors unknown, and many other
and divers persons whose names are to the grand jurors unknown,
then and there being and constituting such qualified electors, as here-
inbefore set out, of the precinct of East Lincoln, in said Blaine
County, and then and there being and constituting all of the qualified
electors as aforesaid then and there residing in said East Lincoln
precinct, and who had then and there at such election aforesaid, in
said Blaine County and in said East Lincoln precinct, voted and cast
their ballots for and in the election of such Member of Congress as
aforesaid, which said East Lincoln precinct was then and there a
duly and legally and properly apportioned and constituted voting
precinct in said Blaine County, known and described in said county
as precinct number thirty (30) ;

And the said George M. Matlock, H. C. Lookabaugh, S. A. Reich-
man, J. H. Geeslin, A. M. Nash, and Ples Bush, whose more full,
true, and correct names are to the grand jurors unknown, and
many other and divers persons whose names are to the grand
50 jurors unknown, then and there being and constituting such
qualified electors, as hereinbefore set out, of the precinct of
West Lincoln, in said Blaine County, and then and there being and
constituting all of the qualified electors as aforesaid then and there
residing in said West Lincoln precinct, and who had then and there
at such election aforesaid, in said Blaine County and in said West
Lincoln precinct, voted and cast their ballots for and in the election
of such Member of Congress as aforesaid, which said West Lincoln
precinct was then and there a duly and legally and properly appor-
tioned and constituted voting precinct in said Blaine County, known
and described in said county as precinct number ten (10) ;

And the said B. B. Bridgford, W. R. Norcross, R. A. Green, N.
Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, whose
more full, true, and correct names are to the grand jurors unknown,
and many other and divers persons whose names are to the grand
jurors unknown, then and there being and constituting such qualified
electors, as hereinbefore set out, of the township of Watonga, in said
Blaine County, and then and there being and constituting all of the
qualified electors as aforesaid then and there residing in said Wa-
tonga Township, and who had then and there at such election afore-
said, in said Blaine County and in said Watonga Township, voted

and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Watonga Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty (20);

And the said David Enlow, D. Schubert, Adam Fisher, J. J. Keller, Conrad Bill, and George Hempel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Flynn, in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said Flynn Township, and who had then and there at such election aforesaid, in said Blaine County and in said Flynn Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Flynn Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number thirteen (13);

And the said George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Logan, in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said Logan Township and who had then and there at such election aforesaid in said Blaine County and in said Logan Township voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Logan Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twelve (12); and that there was then and there held in said

Blaine County, and within the said second congressional district of the State of Oklahoma as aforesaid, and at and within all said voting precincts as aforesaid, a general election for the purpose of electing a legally qualified person for Member of the Congress of the United States of America, for and from the second congressional district of the State of Oklahoma, of which said congressional district the said voting precincts as aforesaid were then and there a part, and that at such election and in said Blaine County, the defendants herein, Tom Moseley and Dan Hogan, were then and there officers of said election in this, that the said Tom Moseley and the said Dan Hogan, together with one W. C. Broady, then and there were the legally appointed, constituted, and qualified and acting members of the county election board of Blaine County, Oklahoma, and that he, the said Tom Moseley, was then and there the duly appointed, quali-

fied, and acting secretary thereof, and he, the said Dan Hogan, was then and there the duly appointed, qualified, and acting chairman thereof, and then and there with said W. C. Broady constituted the said county election board of Blaine County, Oklahoma, and that they, the said Tom Moseley and Dan Hogan, then and there being as such officials and two of the members of said election board and the majority thereof and whose more full, true, and correct names are to the grand jurors unknown in the said county of Blaine, State of Oklahoma, and in the western district of Oklahoma, and in the second congressional district of Oklahoma, and within the jurisdiction of said court, did then and there wickedly, wilfully, knowingly, maliciously, corruptly, unlawfully, and feloniously

53 agree, combine, confederate, and conspire together and with each other to injure and oppress the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, and Will Shanley, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out of the township of Arapaho in said Blaine County, known and described in said county as precinct number eight (8), who had then and there at such election aforesaid, in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and said C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, and Garfield Jefferson, whose more full, true, and correct names are to the grand jurors unknown and many other and divers persons whose names are to the grand jurors unknown and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out of the precinct of West Dixon, in said Blaine County, known and described in said county as precinct number twenty-eight (28), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and said H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, and J. W. Russworm, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out of the precinct of East Dixon in said Blaine County, known and described in said county as precinct number nine (9), who

54 had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and the said J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, and H. H. Bartumus, whose more full, true, and correct names are to the grand jurors unknown and many other and divers persons whose names are to the grand jurors unknown and all of whom then and there being and constituting all of such qualified electors as here-

inbefore set out of the township of Carlton, in said Blaine County, known and described in said county as precinct number twenty-nine (29), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and said Troy Stanberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, and J. H. Hadsell, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out of the precinct of Canton, in said Blaine County, known and described in said county as precinct number twenty-three (23), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and the said J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, and Sam Clark, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the township of Cedar Valley, in said

55 Blaine County, known and described in said county as precinct number six (6), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, and J. Erlenmaier, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the precinct of East Lincoln, in said Blaine County, known and described in said county as precinct number thirty (30), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and said George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, and Ples Bush, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the precinct of West Lincoln, in said Blaine County, known and described in said county as precinct number ten (10), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, and J. P. Roetzel, whose more full, true, and correct names are to the grand jurors unknown, and

many other and divers persons whose names are to the grand jurors unknown and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the township of Watonga, in said Blaine County, known and described in said county as precinct number twenty (20), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, and George Hempel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the township of Flynn, in said Blaine County, known and described in said county as precinct number thirteen (13), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the township of Logan, in said Blaine County, known and described in said county as precinct number twelve (12), who had then and there at such election aforesaid, in said Blaine County and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid, in the free exercise and enjoyment of the right and privilege secured to them and to each of them by the Constitution and laws of the United States, to vote and to exercise

57 the right of suffrage in the election of a legally qualified person for Member of the Congress of the United States of America for and from the said second congressional district of Oklahoma, at such general election described as aforesaid, and then and there being held for such purpose in said Blaine County and in said precincts as aforesaid, and that they, the said Tom Moseley and Dan Hogan then and there officers of said election as aforesaid, for the purpose of illegally and unlawfully injuring, oppressing, and preventing the said persons named as aforesaid, and each and all of them from freely exercising and enjoying the lawful right to vote at said election for a legally qualified person for such Member of the Congress of the United States of America and from freely exercising and enjoying the right of suffrage in the election of such Member of Congress at said election then and there held for such purpose after such persons hereinbefore named as such qualified electors and each and all of them, had cast their ballots as aforesaid for such Member of Congress of the United States of America and caused same to be placed in the legal and proper ballot boxes in the said precincts hereinbefore named, and in said Blaine County and at said election, and

that thereafter then the election certificates and returns of the results of said election for such Member of Congress from the said several precincts hereinbefore named and described, which were to be returned and delivered to the said county election board of Blaine County, and to the said Tom Moseley and Dan Hogan, then and there two of the members and the majority of the said county election board, together with all the election returns and certificates from each and all of the other remaining precincts in said Blaine County

for the purpose of being reviewed and canvassed by the said
58 county election board and by the said Tom Moseley and the said Dan Hogan, two of the members and the majority thereof, and that after all such precinct election returns and certificates of the results of said election of such Member of Congress, from all the precincts in said Blaine County, had been legally, regularly, and properly issued, made, and returned by the legally appointed, constituted, and proper precinct election officer or officers of all such precincts to the said county election board of said Blaine County and to the said Tom Moseley and Dan Hogan, two of the members and officers and the majority of said county election board, should and would wilfully, unlawfully, feloniously, wickedly, and in bad faith cause to be held and hold in the town of Watonga, and in said Blaine County, a meeting of the said county election board at which said meeting all the members thereof, to wit: The said Tom Moseley, as secretary thereof, and the said Dan Hogan, as chairman thereof, and the said W. C. Broady, as the third member thereof, should and would be present, and at which said meeting as aforesaid, without the knowledge, consent, or approval of the said W. C. Broady, the said Tom Moseley, and the said Dan Hogan should and would then and there review, list, canvass, and compute all of the results of the election of such Members of Congress and all the returns of the votes and ballots cast for the election of such Member of Congress at said election from all of the voting precincts then and there existing in said Blaine County, and should and would at said meeting aforesaid prepare, issue, and sign a certain return and certificate of the result of the entire vote cast for such Member of Congress in said election and in said Blaine County and in all the precincts thereof, and that thereupon the said Tom Moseley and the said Dan Hogan
should and would unlawfully and wrongfully retain possession
59 of said return and certificate aforesaid and should and would wholly fail, refuse, and neglect to send or transmit or cause to be sent or transmitted to the State election board of the State of Oklahoma or to the secretary or other officers thereof, and that thereafter the said Tom Moseley, the secretary of said election board, and the said Dan Hogan, the chairman of said election board, should and would without notice to the said W. C. Broady and without his knowledge, consent, or approval cause to be held and hold a secret meeting of said county election board, at which said meeting the said W. C. Broady should and would not be present, and at which said secret meeting as aforesaid, the said Tom Moseley, the secretary of

the said election board, and the said Dan Hogan, the chairman of said election board, and should and would wilfully, unlawfully, feloniously, wickedly, and in bad faith and irrespective of the fact that the said precinct election returns and certificates of the results of said election of said Member of Congress so returned and reported as aforesaid, from said precincts hereinbefore described and designated by name and number would or might be lawful and legal and proper and regular upon their face wholly disregard each and all of the said certificates of the results of said election and returns of the votes and ballots cast in the said precincts as aforesaid, at said election for such Member of Congress and in said Blaine County and would and should then and there in bad faith, wickedly, intentionally, designedly, and without authority of law and corruptly fail, neglect, and refuse to list, return, consider, canvass, and compute as a part of the total election returns and results from Blaine County of said election of such Member of Congress aforesaid, each and all of the said returns, certificates, reports, and results from the said several precincts in
60 said Blaine County, as hereinbefore alleged, to wit, election precincts apportioned, constituted, and hereinbefore described and designed as Arapaho Township, precinct number eight (8); West Dixon precinct, number twenty-eight (28); East Dixon precinct, number nine (9); Carlton Township precinct, number twenty-nine (29); Canton precinct, number twenty-three (23); Cedar Valley Township precinct, number (6); East Lincoln precinct, number thirty (30); West Lincoln precinct, number ten (10); Watonga Township precinct, number twenty (20); Flynn Township precinct, number thirteen (13); and Logan Township precinct, number twelve (12); a more particular, definite, or certain description of said precincts being to the grand jurors unknown, and that they, the said Tom Moseley and the said Dan Hogan as such officers and members of said election board, should and would then and there with the unlawful and evil purpose and intent aforesaid wholly fail, neglect, and refuse to return or certify to the State election board of the State of Oklahoma, the returns and the reports and results of the votes and ballots cast for such Member of Congress at the said election in said Blaine County and in said precincts, and each and all of them as aforesaid, and would and should then and there wholly omit from the certificate and return of the results of said election of such Member of Congress in said Blaine County to be thereafter made and returned and certified to the said State election board of the State of Oklahoma by the said county election board of Blaine County, Oklahoma, and by them, the said Tom Moseley and the said Dan Hogan, two of the members and the majority thereof, all of the returns reports, and results of the
61 election of such Member of Congress in said precincts as aforesaid, and also omit from such return and certificate, as aforesaid, to be by the said county election board of said Blaine County and by the said Tom Moseley and the said Dan Hogan, two

of the members and the majority thereof returned and certified to the said State election board of the State of Oklahoma, the entire result of all the votes and ballots cast for such Member of Congress at said election in said precincts, as aforesaid, and they, the said Tom Moseley and Dan Hogan thereby and by the means aforesaid should and would unlawfully, wilfully, illegally, wrongfully, and feloniously injure and oppress the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, Will Shanley, C. F. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, Garfield Jefferson, H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, J. W. Russworm, J. H. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, H. H. Bartumus, Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, J. H. Hadsell, J. H. Shultz, T. M. Gender, Chris Hafner, J. L. McKinsey, R. L. Hysell, Sam Clark, A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeir, J. Erlensmaier, George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, Ples Bush, B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, David Enlow, D. Schubert, Adam Fisher, J. J. Keller, Conrad Bill, George Hempel, George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and each and all of them and many other and

62 divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all such qualified electors as aforesaid, who had then and there at such election aforesaid in said Blaine County and in said precincts aforesaid, cast their ballots for and in the election of such Member of Congress as aforesaid, in the free exercise and enjoyment of a right and privilege secured to said persons and to each of them, by the Constitution and laws of the United States, to wit, the right and privilege at said election hereinbefore alleged, of voting and exercising the right of suffrage in the election of a duly qualified person as a Member of the Congress of the United States of America of and from the second congressional district of the State of Oklahoma; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

FOURTH COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present:

That heretofore, to wit, on the fifth day of November, A. D. one thousand nine hundred and twelve, at and within Blaine County, in the State of Oklahoma, and within the Western District thereof, and within the jurisdiction of this court, the following-named persons, to wit, A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, Will Shanley, C. E. Rickman, F. A. Knott, M. L. Price,

L. W. Wilhite, A. V. Knoll, Garfield Jefferson, H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, J. W. Russworm, J. M. Haigler, John McGee, R. A. Arndt, J. C. Dinnett, E. McKee, H. H. Bartumus, Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, J. H. Hadsell, J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, Sam Clark, A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, J. Erlenmaier, George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, Ples Bush, B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, David Enlow, D. Schubert, Adam Fisher, J. J. Keller, Conrad Bill, George Hempel, George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, were then and there residents and citizens of the United States of America, and of the State of Oklahoma and of the county of Blaine therein, and were then and there legally qualified electors and voters with the right and privilege secured to them and each of them by the Constitution and the laws of the United States, to vote and to exercise the right of suffrage in the election of a legally qualified person for a Member of the Congress of the United States of America, of and for the second congressional district of Oklahoma, at a general election then and there being legally held for such purpose in said State of Oklahoma and in said Blaine County therein, and in said second congressional district therein, and in the western district of Oklahoma, and within the jurisdiction of this court, and such persons and each and all of them, as aforesaid, then and there also having the necessary proper and legal qualifications requisite in the State of Oklahoma and under the laws of the State of Oklahoma, for electors of the most numerous branch of the legislature of the said State of Oklahoma, and the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, and Will Shanley, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out of the township of Arapaho, in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid, then and there residing in said Arapaho Township, and who had then and there at such election aforesaid, in said Blaine County, and in said Arapaho Township voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Arapaho Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number eight (8).

And the said C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, and Garfield Jefferson, whose more full, true,

and correct names are to the grand jurors unknown and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out of the precinct of West Dixon in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said West Dixon precinct, and who had then and there at such election aforesaid, in said Blaine County, and in said West Dixon precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said West Dixon precinct was then and there a
65 duly and legally and properly appointed and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-eight (28).

And the said H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, and J. W. Russworm, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out of the precinct of East Dixon in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid, then and there residing in said East Dixon precinct and who had then and there, at such election aforesaid, in said Blaine County, and in said East Dixon precinct voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said East Dixon precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County known and described in said county as precinct number nine (9).

And the said J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, and H. H. Hartumus, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there, being and constituting such qualified electors as hereinbefore set out, of the township of Carlton in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid, then and there residing in said Carlton Township,
66 and who had then and there at such election aforesaid in said Blaine County and in said Carlton Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Carlton Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-nine (29).

And the said Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, and J. H. Hadsell, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out, of the precinct of Canton, in said Blaine County,

and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said Canton precinct, and who had then and there at such election aforesaid in said Blaine County and in said Canton precinct voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Canton precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty-three (23).

And the said J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, and Sam Clark, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out of the township of Cedar Valley, in said Blaine County,

67 and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said Cedar Valley Township, and who had then and there, at such election aforesaid, in said Blaine County and in said Cedar Valley Township, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Cedar Valley Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number six (6).

And the said A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusemeier, and J. Erlenmaier, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons, whose names are to the grand jurors unknown, then and there being and constituting such qualified electors as hereinbefore set out, of the precinct of East Lincoln, in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said East Lincoln precinct, and who had then and there at such election aforesaid in said Blaine County and in said East Lincoln Precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said East Lincoln precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County known and described in said county as precinct number thirty (30).

And the said George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, and Ples Bush, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons, whose names are to the grand jurors unknown, then and there being and constituting such qualified electors,

68 as hereinbefore set out, of the precinct of West Lincoln in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said West Lincoln precinct and who had then and there at such election aforesaid, in said Blaine County and in said West Lincoln

precinct, voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said West Lincoln precinct was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number ten (10).

And the said B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, J. P. Roetzel, whose more full, true and correct names are to the grand jurors unknown, and many other and divers persons whose names are

69 to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Watonga, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Watonga Township, and who had then and there at such election aforesaid, in said Blaine County and in said Watonga Township, voted and cast their ballots for and in the election of such Member of Congress, as aforesaid, which said Watonga Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twenty (20).

And the said David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, and George Hampel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Flynn, in said Blaine County, and then and there being and constituting all of the qualified electors, as aforesaid, then and there residing in said Flynn Township, and who had then and there at such election aforesaid, in said Blaine County and in said Flynn Township, voted and cast their ballots for and in the election of such Member of Congress, as aforesaid, which said Flynn Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number thirteen (13).

70 And the said George Nicholson, J. W. Thompson, T. W.

Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, then and there being and constituting such qualified electors, as hereinbefore set out, of the township of Logan, in said Blaine County, and then and there being and constituting all of the qualified electors as aforesaid then and there residing in said Logan Township, and who had then and there at such election aforesaid in said Blaine County and in said Logan Township voted and cast their ballots for and in the election of such Member of Congress as aforesaid, which said Logan Township was then and there a duly and legally and properly apportioned and constituted voting precinct in said Blaine County, known and described in said county as precinct number twelve (12); and that there was then and there held

in said Blaine County and within the said second congressional district of the State of Oklahoma as aforesaid, and at and within all said voting precincts as aforesaid, a general election for the purpose of electing a legally qualified person for Member of the Congress of the United States of America for and from the second congressional district of the State of Oklahoma, of which said congressional district the said voting precincts as aforesaid, were then and there a part, and that at such election and in said Blaine County the defendants herein, Tom Moseley and Dan Hogan were then and there officers of said election in this, that the said Tom Moseley and the said Dan Hogan, together with one W. C. Broady, then and there were the legally appointed, constituted, and qualified and acting members of the county election board of Blaine County, Oklahoma,

and that he, the said Tom Mosley, was then and there the duly
71 appointed, qualified, and acting secretary thereof, and he, the said Dan Hogan, was then and there the duly appointed, qualified, and acting chairman thereof, and then and there with said W. C. Broady constituted the said county election board of Blaine County, Oklahoma, and that they, the said Tom Moseley and Dan Hogan, then and there being as such officials and two of the members of said election board and the majority thereof, whose more full, true, and correct names are to the grand jurors unknown, in the said County of Blaine, State of Oklahoma, and in the western district of Oklahoma, and in the second congressional district of Oklahoma, and within the jurisdiction of said court, did then and there wickedly, wilfully, knowingly, maliciously, corruptly, unlawfully, and feloniously agree, combine, confederate, and conspire together and with each other to injure and oppress the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, and Will Shanley, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out of the township of Arapaho in said Blaine County, known and described in said county as precinct number eight (8), who had then and there at such election aforesaid, in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and said C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, and Garfield Jefferson, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names

are to the grand jurors unknown, and all of whom then and
72 there being and constituting all of such qualified electors, as hereinbefore set out of the precinct of West Dixon, in said Blaine County, known and described in said county as precinct number twenty-eight (28), who had then and there, at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and said H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals,

A. Crawford, and J. W. Russworm, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out of the precinct of East Dixon, in said Blaine County, known and described in said county as precinct number nine (9), who had then and there at such election aforesaid, in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and the said J. M. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, and H. H. Bartumus, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as herein before set out of the township of Carlton, in said Blaine County, known and described in said county as precinct number twenty-nine (29), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and said Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, and J. H. Hadsell, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out of the precinct of Canton, in said Blaine County, known and described in said county as precinct number twenty-three (23), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid, and the said J. H. Shultz, T. M. Gender, Chris Haefner, J. L. McKinsey, R. L. Hysell, and Sam Clark, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the township of Cedar Valley, in said Blaine County, known and described in said county as precinct number six (6), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, and J. Erlenmaier, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the precinct of East Lincoln, in said Blaine County, known and described in said county as precinct number thirty (30), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in

the election of such Member of Congress aforesaid, and said George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, and Ples Bush, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the precinct of West Lincoln, in said

74 Blaine County, known and described in said county as precinct number ten (10), who had then and there at such election aforesaid in said Blaine County, and in said precinct, voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells, J. D. Davis, and J. P. Roetzel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the township of Watonga, in said Blaine County, known and described in said county as precinct number twenty (20), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, and George Hempel, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the township of Flynn, in said Blaine County, known and described in said county as precinct number thirteen (13), who had then and there at such election aforesaid in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid; and said George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all of such qualified electors as hereinbefore set out, of the township of Logan, in said Blaine County, known and described in said county as precinct number twelve (12), who had then

75 and there at such election aforesaid, in said Blaine County and in said precinct voted and cast their ballots for and in the election of such Member of Congress aforesaid; for and on account of and because of each and all of said persons hereinbefore designated, named, and referred to, having, as aforesaid, so exercised a right and privilege secured to them and each of them by the Constitution and laws of the United States, to wit, the right and privilege of casting their ballots at said election for such Member of Congress in said precincts and in said Blaine County and causing their said ballots, as aforesaid, to be placed and deposited in the legal and proper ballot boxes in

said precincts as aforesaid and that they, the said Tom Moseley and the said Dan Hogan, then and there officers of said election as aforesaid, for the purpose of illegally and unlawfully injuring and oppressing the said persons designated, named, and described as aforesaid, for and on account of and because of such persons named, designated, and described as aforesaid, having as aforesaid, exercised such right and privilege as aforesaid, to wit, the right of such persons and each of them to cast their ballots for such Member of Congress in said election, in said Blaine County and in said precincts, after such persons hereinbefore named as such qualified electors and each and all of them had cast their ballots, as aforesaid, for such Member of Congress of the United States of America and caused same to be placed in the legal and proper ballot boxes in the said precincts hereinbefore named, and in said Blaine County and at said election and that thereafter when the election certificates and returns of the results of said election of such Member of Congress from the said several precincts hereinbefore named and described,

76 which were to be returned and delivered to the said county election board of Blaine County, and to the said Tom Moseley and Dan Hogan, then and there two of the members and the

majority of the said county election board, together with all the election returns and certificates from each and all of the other remaining precincts in said Blaine County, for the purpose of being reviewed and canvassed by the said county election board and by the said Tom Moseley and the said Dan Hogan, two of the members and the majority thereof, and that after all such precinct election returns and certificates of the results of said election of such Member of Congress, from all the precincts in said Blaine County had been legally, regularly, and properly issued, made, and returned by the legally appointed, constituted, and proper precinct election officer or officers of all such precincts to the said county election board of said Blaine County and to the said Tom Moseley and Dan Hogan, two of the members and officers and the majority of said county election board, should and would wilfully, unlawfully, feloniously, wickedly, and in bad faith and irrespective of the fact that the said precinct election returns and certificates of the results of said election of said Member of Congress so returned and reported as aforesaid, from said precincts hereinbefore described and designated by name and number, would or might be lawful and legal and proper and regular upon their face, wholly disregard each and all of the said certificates of the results of said election and returns of the votes and ballots cast in the said precincts as aforesaid, at said election for such member of Congress and in said Blaine County and would and should then and there in bad faith, wickedly, intentionally, designedly, and without authority of law, and corruptly fail, neglect,

77 and refuse to list, return, consider, canvass, and compute as a part of the total election returns and results from Blaine County of said election of such Member of Congress aforesaid, each and all of the said returns, certificates, reports, and results

from the said several precincts in said Blaine County as hereinbefore alleged to wit, election precincts apportioned, constituted and hereinbefore described and designated as Arapaho Township, precinct number eight (8), West Dixon precinct number twenty-eight (28), East Dixon precinct number nine (9), Carlton Township precinct number twenty-nine (29), Canton precinct number twenty-three (23), Cedar Valley Township precinct number six (6), East Lincoln precinct number thirty (30), West Lincoln precinct number ten (10), Watonga Township precinct number twenty (20), Flynn Township precinct number thirteen (13), and Logan Township precinct number twelve (12), a more particular, definite, or certain description of said precincts being to the grand jurors unknown, and that they, the said Tom Moseley and the said Dan Hogan, as such officers and members of said election board, should and would then and there, with the unlawful and evil purpose and intent aforesaid, wholly fail, neglect, and refuse to return or certify to the State election board of the State of Oklahoma, the returns and the reports and results of the votes and ballots cast for such Member of Congress at the said election in said Blaine County and in said precincts and each and all of them as aforesaid, and would and should then and there wholly omit from the certificates and return of the results of said election of such Member of Congress in said Blaine County to be thereafter made and returned and certified to the said State election board of the State of Oklahoma by the said county election board of

Blaine County, Oklahoma, and by them, the said Tom Moseley
78 and the said Dan Hogan, two of the members and the majority thereof, all of the returns, reports, and results of the election of such Member of Congress in said precincts as aforesaid, and also omit from such returns and certificate, as aforesaid, to be by the said county election board of said Blaine County and by the said Tom Moseley and the said Dan Hogan, two of the members and the majority thereof returned and certified to the said State election board of the State of Oklahoma, the entire result of all the votes and ballots cast for such Member of Congress at said election in said precincts, as aforesaid, and they, the said Tom Moseley and Dan Hogan thereby and by the means aforesaid should and would unlawfully, wilfully, illegally, wrongfully, and feloniously injure and oppress the said A. S. Baker, Henry Shamburg, J. R. Whisler, D. L. Taylor, Tim Foley, Will Shanley, C. E. Rickman, F. A. Knott, M. L. Price, L. W. Wilhite, A. V. Knoll, Garfield Jefferson, H. Hoskinson, P. P. Morland, J. M. McClure, Frank Beals, A. Crawford, J. W. Russworm, J. H. Haigler, John McGee, R. A. Arndt, J. C. Dimmett, E. McKee, H. H. Bartumus, Troy Stansberry, Fred Seigfried, R. Huffman, Doctor Tracy, E. E. Willis, J. H. Hadsell, J. H. Shultz, T. M. Gender, Chris. Haefner, J. L. McKinsey, R. L. Hysell, Sam Clark, A. J. Foster, I. N. Miller, W. D. Blair, Lew Brannon, H. Heusenmeier, J. Erienmaier, George M. Matlock, H. C. Lookabaugh, S. A. Reichman, J. H. Geeslin, A. M. Nash, Ples Bush, B. B. Bridgford, W. R. Norcross, R. A. Green, N. Chaney, Ira Burford, Joe Wells,

J. D. Davis, J. P. Roetzel, David Enlow, D. Schuber, Adam Fisher, J. J. Keller, Conrad Bill, George Hempel, George Nicholson, J. W. Thompson, T. W. Lesperence, Otto Piper, Dudley Roach, and H. Nicholia, whose more full, true, and correct names are to the grand jurors unknown, and each and all of them and many other and divers persons whose names are to the grand jurors unknown, and all of whom then and there being and constituting all such qualified electors as aforesaid, who had then and there at such
 79 election aforesaid in said Blaine County and in said precincts aforesaid, cast their ballots for and in the election of such Member of Congress as aforesaid, for and on account of and because of the said persons as aforesaid, named, designated, and described, and each and all of them, having exercised a right and privilege guaranteed and secured to them and each of them by the Constitution and the laws of the United States, to wit, the right and privilege to cast their ballots for such Member of Congress and cause the same to be placed in the legal and proper ballot boxes in said precincts hereinbefore described by name and number in said election and in said Blaine County and in said second congressional district of the State of Oklahoma and within the jurisdiction of this court; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

HOMER N. BOARDMAN,
United States Attorney.

Witnesses: George Butler, Elias Wilson, F. A. Knott, John McGee, Carl Hollender, A. L. Emery, Theodore Graalman, June Craven, Geo. Massey, Ben. Smith, Harrison Brown, Carrie Lambly.

(Endorsed:) No. 855. United States District Court, Western District of Oklahoma. The United States vs. Tom Moseley and Dan Hogan. Indictment for conspiracy to injure and oppress citizens of United States in free exercise and enjoyment of rights and privileges secured by Constitution and laws of the United States in violation of section 19 Penal Code. A true bill. P. S. Mason, foreman grand jury. Filed Jan. 18, 1913. Arnold C. Dolde, Clerk. H. N. Boardman, U. S. Attorney.

80 Thereafter on the 22nd day of January, 1913, the following proceedings were had in said cause, to-wit:

UNITED STATES

vs.

TOM MOSELEY AND DAN HOGAN. } No. 855.

Now, on this 22nd day of January, 1913, comes Homer N. Boardman, United States attorney, and comes the defendants, and each of them in their own proper person and by J. T. Dortch, their attorney.

Thereupon defendants, and each of them, are duly arraigned upon the indictment herein and upon said arraignment defendants are

granted to February 21, 1913, in which to file their motion or demurrers herein, and it is further ordered that the hearing in said pleas be assigned for March 3, 1913, at 9 o'clock a. m., and it is further ordered that said cause be continued to the March, 1913, term of said court, and the defendants and each of them are required to be and appear before said court at Oklahoma City, in said district, on Monday, March 3, 1913, at 9 o'clock a. m., to await the further orders of said court.

81 In the District Court of the United States in and for the Western District of Oklahoma.

Demurrer to indictment.

The United States of America, plaintiff, vs. Tom Moseley and Dan Hogan, defendants.

No. —.

Now come the defendants, and each of them, and demur to the indictment; and each and every count thereof, for the reason that the same in every count thereof fails to charge these defendants, or either of them, with the commission of any crime against the laws of the United States of America.

TOM MOSELEY & DAN HOGAN,
Defendants,
 By GIDDINGS & GIDDINGS,
Their Attorneys.

(Endorsed:) No. 855. In the U. S. District Court, Oklahoma County, Okla., United States of America, plaintiff, vs. Tom Moseley et al., defendant. Demurrer to indictment. Filed Feby. 21, 1913. Arnold C. Dolde, clerk. Giddings & Giddings, attorneys for defendants. Phone Walnut 1612. 110½ W. Main St., Oklahoma City, Okla.

82 Thereafter on the 12th day of March, 1913, the following proceedings were had in said cause, to-wit:

UNITED STATES	} No. 855.
<i>vs.</i>	
TOM MOSELEY, DAN HOGAN.	

Now on this 12th day of March, 1913, it is ordered that said cause be assigned for hearing upon the demurrer herein, at Oklahoma City, in said district, on Monday, March 17, 1913, at 9 o'clock a. m.

83 Thereafter, on the 18th day of March, 1913, the following proceedings were had in said cause, to-wit:

UNITED STATES	}	No. 855.
<i>vs.</i>		
TOM MOSELEY, DAN HOGAN.		

Now, on this 18th day of March, 1913, it is ordered that said case be stricken from the assignment calendar and reassigned for hearing on April 1, 1913.

84 Thereafter, on the 1st day of April, 1913, the following proceedings were had in said cause, to-wit:

UNITED STATES	}	No. 855.
<i>vs.</i>		
TOM MOSELEY, DAN HOGAN.		

Now, on this 1st day of April, 1913, comes H. N. Boardman, United States attorney, and comes the defendants, by Giddings & Giddings, their attorneys.

Thereupon defendants by counsel present their demurrer to the indictment, and argument of counsel is had, and thereupon the further hearing is continued to 9.30 o'clock a. m., April 2, 1913.

85 Thereafter, on the 2nd day of April, A. D. 1913, the following proceedings were had in said cause, to-wit:

Order.

UNITED STATES OF AMERICA, PLAINTIFF,	}	No. 855.
<i>vs.</i>		
TOM MOSELEY, DAN HOGAN, DEFENDANTS.		

This cause came on for hearing this 2nd day of April, 1913, upon the demurrer of the defendants and each of them to the indictment herein. Plaintiff appearing by Homer N. Boardman, Esq., United States District Attorney, who in this behalf prosecutes the pleas of the Government; defendants and each of them appearing by Giddings & Giddings, their attorneys.

Thereupon the demurrer is duly presented to the court, and after argument of counsel, and the court being duly advised in the premises, it is by the court ordered that said demurrer be, and the same is sustained, to each count of the indictment, upon the ground that section nineteen (19) of the Penal Code is held by the Court not to apply or extend to the acts and doings charged against the defendants in any count of said indictment. To which ruling of the court the plaintiff duly excepts, and gives notice of an appeal to the Supreme Court of the United States; and

Thereupon it is further ordered by the court that the defendants and each of them be, and they are hereby, held upon their own recognizance pending said appeal, and to await the further orders of the court.

86 In the District Court of the United States for the Western District of Oklahoma.

Petition for writ of error.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN	} No. 855.
error,	
vs.	
TOM MOSELEY AND DAN HOGAN, DEFENDANTS.	

Now, comes the United States of America by its attorney, Homer N. Boardman, United States district attorney for the Western district of Oklahoma, and complains that in the record and proceedings had in this cause, and in the judgment sustaining the defendant's demurrer to counts 1, 2, 3, and 4 of the indictment found herein against said Tom Moseley and Dan Hogan, on January eighteenth, 1913, and dismissing said counts of said indictment, manifest error hath happened, as will appear in the assignment of errors herewith submitted.

Wherefore the United States of America prays for the allowance of a writ of error and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated this 10th day of April, 1913.

HOMER N. BOARDMAN,
United States Attorney
for the Western District of Oklahoma.
 W. B. HEROD,
Assistant United States Attorney
for the Western District of Oklahoma,
Attorneys for Petitioner.

87 (Endorsed:) No. 855. In the District Court of the United States for the Western District of Oklahoma. United States of America, plaintiff, plaintiff in error, vs. Tom Moseley and Dan Hogan, defendants. Petition for writ of error. Filed April 18, 1913, Arnold C. Dolde, clerk.

88 In the District Court of the United States for the Western District of Oklahoma.

Assignment of errors.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN	} No. 855.
error,	
<i>vs.</i>	
TOM MOSELEY AND DAN HOGAN, DEFENDANTS.	

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors which it avers occurred in the decision of the Court herein sustaining the demurrer to counts 1, 2, 3, and 4 of the indictment found herein on January 18th, 1913, against Tom Moseley and Dan Hogan:

I. The Court erred in sustaining the demurrer to counts 1, 2, 3, and 4 of the said indictment.

II. The Court erred in not overruling the demurrer to counts 1, 2, 3, and 4 of the said indictment.

III. The Court erred in holding as a matter of law that counts 1, 2, 3, and 4 of said indictment were insufficient in law.

IV. The Court erred in its construction of section 19 of the Federal Penal Code of 1910.

V. The Court erred in its interpretation of said section 19 of the Federal Penal Code of 1910.

89 VI. The Court erred in its decision in deciding that the right of suffrage in the election of a Member of Congress consisted only of the physical right of depositing the ballot in the ballot box.

VII. The Court erred in its decision and in holding that the rights and privileges secured to citizens by the Constitution and laws of the United States do not include the right or privilege of having such citizens' ballots counted, canvassed, and returned by the county election board after such ballots had been cast by such citizens, for a Member of Congress.

VIII. The Court erred in its decision in holding and deciding that the right or privilege of a citizen to have his ballot or vote for Member of Congress counted, computed, canvassed, and returned by the county election board after the same had been cast is not a right or privilege secured to such citizens by the Constitution or laws of the United States within the meaning of said section 19 of the Federal Penal Code of 1910.

IX. The Court erred in its decision in deciding and holding that the conspiracy and acts charged in the indictment do not constitute a conspiracy to injure and oppress citizens of the United States in the free exercise and enjoyment of certain rights and privileges secured to them by the Constitution and laws of the United States within the meaning of said section 19 of the Federal Penal Code of 1910.

X. The Court erred in its decision in holding and deciding that the conspiracy and acts charged in the indictment do not constitute a conspiracy to injure and oppress citizens of the United States
90 for and on account of and because of such citizens having exercised certain rights and privileges secured to such citizens by the Constitution and laws of the United States within the meaning and purview of section 19 of the Federal Penal Code of 1910.

XI. The Court erred in sustaining defendants' demurrer to count 4 of the indictment in deciding and holding that the conspiracy and acts charged in said count 4 do not constitute a conspiracy to injure and oppress certain citizens of the United States for and on account of and because of such citizens having exercised certain rights and privileges secured to them by the Constitution and laws of the United States as contemplated by section 19 of the Federal Penal Code of 1910.

XII. The Court erred in its decision in holding and deciding that the indictment did not charge the commission of an offense against the laws of the United States.

XIII. The Court erred in its decision in holding and deciding that count 1 of the indictment did not charge facts sufficient to constitute an offense against the laws of the United States.

XIV. The Court erred in its decision in holding and deciding that count 2 of the indictment did not charge facts sufficient to constitute an offense against the laws of the United States.

XV. The Court erred in its decision in holding and deciding that count 3 of the indictment did not charge facts sufficient to constitute an offense against the laws of the United States.

91 XVI. The Court erred in its decision in holding and deciding that count 4 of the indictment did not charge facts sufficient to constitute an offense against the laws of the United States.

And the United States aforesaid, plaintiff in error, prays that the judgment entered herein sustaining the demurrer to counts 1, 2, 3, and 4 of the said indictment for the errors aforesaid and other errors in the record and proceedings herein may be reversed and altogether held for nothing, and that the plaintiff in error may be restored to all things which it has lost by reason of said judgment, and that the District Court of the United States for the Western District of Oklahoma be directed to vacate and set aside said judgment and compel the defendant, the defendant in error, to plead to the said indictment.

Dated this 18th day of April, 1913.

HOMER N. BOARDMAN,

United States Attorney in and for the Western District of Oklahoma, attorney for plaintiff.

(Endorsed:) No. 855. In the District Court of the United States for the Western District of Oklahoma. United States of America, plaintiff in error, vs. Tom Moseley and Dan Hogan, defendants. Assignment of errors. Filed April 18, 1913. Arnold C. Dolde, clerk.

- 92 In the District Court of the United States for the Western District of Oklahoma.

Order allowing writ of error.

UNITED STATES
vs.
TOM MOSELEY, DAN HOGAN. } No. 855.

This 18th day of April, 1913, came the United States, plaintiff in the above-entitled cause, by Homer N. Boardman, United States attorney, and filed herein and presented to the Court its petition praying for an allowance of a writ of error in said cause to be urged by it, and that a transcript of the record and proceedings and papers upon which the judgment in said cause was rendered may be sent to the Supreme Court of the United States of America, and having accompanied said petition with assignment of errors as required by law, upon consideration whereof, the Court does allow the writ of error.

- 93 In the District Court of the United States for the Western District of Oklahoma.

Præcipe for record.

UNITED STATES
vs.
TOM MOSELEY, DAN HOGAN. } No. 855.

To the clerk of the District Court of the United States for the Western District of Oklahoma:

You will please prepare a transcript for appeal in the above-entitled cause, and include therein the following, to wit: Original citation; indictment; journal entry of January 22, 1913; demurrer to indictment; journal entry of March 12, 1913; journal entry of March 18, 1913; journal entry of April 1, 1913; journal entry of April 2, 1913; assignment of errors; order allowing writ of error; petition for writ of error; writ of error; and all other entries, orders, and pleadings in the case, if any there are.

Respectfully submitted.

HOMER N. BOARDMAN,
U. S. Atty.

(Endorsed:) No. 885. United States vs. Tom Moseley et al. Præcipe for transcript. Filed May 1, 1913. Arnold C. Dolde, clerk.

94 In the District Court of the United States for the Western District of Oklahoma.

Election and designation of record.

UNITED STATES OF AMERICA	} No. 855.
vs.	
TOM MOSELEY AND DAN HOGAN.	

In the above-entitled cause the plaintiff in error, United States of America, gives notice of its election to take and file the transcript of the record herein in the appellate court, to be printed under the supervision of its clerk and under its rules.

And the said plaintiff in error hereby designates all of the record in said cause to be printed and included in said transcript.

HOMER N. BOARDMAN,
United States District Attorney, Western District of Oklahoma.

We hereby accept service of the above this 6 day of May, A. D. 1913, and acknowledge receipt of a copy thereof.

GEO. H. GIDDINGS & E. J. GIDDINGS,
Attorneys for Defendants in Error.

(Endorsed:) No. 855. United States vs. Tom Moseley, Dan Hogan. Election & designation. Filed May 8, 1913. Arnold C. Dolde, clerk. By M. V. Haws, deputy.

95 UNITED STATES OF AMERICA, } ss:
Western District of Oklahoma.

I, Arnold C. Dolde, clerk of the District Court of the United States of America for the Western District of Oklahoma in the Eighth Circuit, do hereby certify the foregoing to be a full, true, and complete transcript of the pleadings, record, and proceedings in said court in case No. 855, wherein United States is plaintiff, and Tom Moseley and Dan Hogan are defendants, as full, true, and complete as the said transcript purports to contain, and as called for by the præcipe and designation for transcript of the record above set forth.

I hereby certify that the original writ of error and the original citation are hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the city of Guthrie, in said district, in the eighth circuit, this 12 day of May, 1913.

[SEAL.]

ARNOLD C. DOLDE,
*Clerk United States District Court,
Western District of Oklahoma.*

(Endorsed:) File No. 23708. W. Oklahoma D. C. U. S. Term No. 1133. The United States, plaintiff in error, vs. Tom Mosley and Dan Hogan. Filed May 19, 1913. File No. 23,708.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

UNITED STATES, PLAINTIFF IN ERROR,	} No. 566.
v.	
TOM MOSELEY AND DAN HOGAN.	

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF OKLAHOMA.*

MOTION BY THE UNITED STATES TO ADVANCE.

On behalf of the United States and at the request of opposing counsel the Solicitor General respectfully moves the court to advance the above-entitled cause for oral argument.

This is a prosecution under section 19 of the Criminal Code, formerly section 5508 of the Revised Statutes, and raises the question whether that section makes punishable a conspiracy by State election officers to prevent the counting or return of ballots cast for Members of Congress by qualified electors, citizens of the United States.

The indictment, which contained four counts, charged in effect that the defendants, who were officers of a county election board in Oklahoma, conspired to injure and oppress certain legally qualified electors of that county, citizens of the United States, in the free exercise of the right and privilege secured to them by the Constitution and laws of the United

States, of exercising the right of suffrage in the election of a duly qualified person as Member of Congress, and agreed for the purposes of this conspiracy to omit from the certificate of the congressional election in that county, to be made and certified by them to the State election board, all returns of the votes cast for a Member of Congress in the precincts of that county in which said citizens resided. (R., 3-45.)

The indictment was demurred to and the court sustained the demurrer upon the ground that section 19 of the Criminal Code did not apply to the acts and doings charged in the indictment. (R., 46, 47.)

The United States brings the case here under the criminal appeals act of March 2, 1907, 34 Stat. 1246, for a review of the District Court's construction of section 19.

The case is a result of the same local situation as *Guinn and Beal v. United States*, No. 423, which has been advanced and set down for argument at the opening of the present term. While presenting different questions of law, both cases are prosecutions under section 19 for alleged violations of the constitutional rights of United States citizens in congressional elections by election officers of the State of Oklahoma. It will therefore convenience the court as well as the parties if this case can be heard immediately after No. 423.

JOHN W. DAVIS,
Solicitor General.

SEPTEMBER 15, 1913.

INDEX.

	Page.
STATEMENT OF THE CASE	1-4
SPECIFICATION OF ERROR	5
BRIEF OF ARGUMENT	5
ARGUMENT	6-26

I. The following propositions are no longer open in this court:

- (a) Congress may, by appropriate legislation, protect any right or privilege arising from, created or secured by, or dependent upon, the Constitution of the United States 6

Ex parte Virginia, 100 U. S. 339, 345.

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Hodges v. United States, 203 U. S. 1, 24.

Logan v. United States, 144 U. S. 263, 293.

Strauder v. West Virginia, 100 U. S. 303, 310.

United States v. Reese, 92 U. S. 214, 217.
- (b) The right of suffrage in the election of members of Congress is such a right... 6

Ex parte Yarbrough, supra.

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Swafford v. Templeton, 185 U. S. 487.

Wiley v. Sinkler, 179 U. S. 58.
- (c) This right, together with others thus created or secured, is protected by section 19 of the Criminal Code 6

Ex parte Yarbrough, supra, 657.

Felix v. United States, supra; see

Hodges v. United States, supra, 24.

ARGUMENT—Continued.

	Page.
(d) Consequently, section 19, both generally and in its application to the elective franchise, is constitutional.....	6
<i>Ex parte Yarbrough, supra.</i>	
<i>Logan v. United States, supra.</i>	
<i>Motes v. United States</i> , 178 U. S. 458.	
<i>United States v. Waddell</i> , 112 U. S. 76.	
II. The right of suffrage secured by the Constitution consists not merely of the right to cast a ballot but likewise of the right to have that ballot counted.....	8-14
(a) The right in question arises equally from the second and fourth sections of Article I of the Constitution..	9
<i>Ex parte Yarbrough</i> , 110 U. S. 660-664.	
(b) Upon which ever section it depends, it must include the right to have the vote counted.....	9, 11
<i>Ex parte Clark</i> , 100 U. S. 399.	
<i>Ex parte Siebold</i> , 100 U. S. 371.	
<i>In re Coy</i> , 127 U. S. 731.	
<i>United States v. Gale</i> , 109 U. S. 65.	
III. Any conspiracy to interfere with or prevent the free exercise or enjoyment of the constitutional right of suffrage is in violation of section 19 of the Criminal Code.....	14-25
(a) When applied to the elective franchise, the inference is that the statute was designed to prevent any act whereby the complete exercise of that privilege might be prevented or impeded, and not merely attacks or threats directed against the voter's person.....	14
See <i>United States v. Morris</i> , 125 Fed. 322.	
<i>United States v. Stone</i> , 188 Fed. 836, 840.	
<i>United States v. Waddell, supra</i> , p. 80.	

III

ARGUMENT—Continued.

(b) The purpose of the statute.....	Page. 17
(c) Contemporary and subsequent legis- lation.....	19

CONCLUSION.....	26
-----------------	----

CASES CITED.

<i>Callan v. Wilson</i> , 127 U. S. 540.....	22
<i>Clune v. United States</i> , 159 U. S. 590.....	22
<i>Ex parte Clarke</i> , 100 U. S. 399.....	11
<i>Ex parte Siebold</i> , 100 U. S. 371.....	11
<i>Ex parte Virginia</i> , 100 U. S. 339.....	6
<i>Ex parte Yarbrough</i> , 110 U. S. 651.....	6, 17, 18
<i>Felix v. United States</i> , 186 Fed. 685.....	6, 18
<i>Hodges v. United States</i> , 203 U. S. 1.....	6
<i>In re Coy</i> , 127 U. S. 731.....	11
<i>In re Quarles</i> , 158 U. S. 532.....	19
<i>Logan v. United States</i> , 144 U. S. 263.....	6, 19
<i>Minor v. Happersett</i> , 21 Wall. 162.....	10
<i>Motes v. United States</i> , 178 U. S. 458.....	6, 19
<i>Pettibone v. United States</i> , 148 U. S. 197.....	22
<i>Pope v. Williams</i> , 193 U. S. 621.....	10
<i>Slaughter House Cases</i> , 16 Wall. 36.....	18
<i>Smith v. United States</i> , 157 Fed. 721.....	22
<i>Strauder v. West Virginia</i> , 100 U. S. 303.....	6, 18
<i>Swafford v. Templeton</i> , 185 U. S. 487.....	6
<i>United States v. Crosby</i> , 1 Hughes, 448.....	22
<i>United States v. Cruikshank</i> , 92 U. S. 542.....	21
<i>United States v. Gale</i> , 109 U. S. 65.....	11
<i>United States v. Goldman</i> , 3 Woods, 187.....	22
<i>United States v. Morris</i> , 125 Fed. 322.....	15
<i>United States v. Reese</i> , 92 U. S. 214.....	6
<i>United States v. Stone</i> , 188 Fed. 836.....	16
<i>United States v. Waddell</i> , 112 U. S. 76.....	6, 14, 19
<i>Virginia v. Rives</i> , 100 U. S. 313.....	18
<i>Wiley v. Sinkler</i> , 179 U. S. 58.....	6



In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,	} No. 566.
v.	
TOM MOSELEY AND DAN HOGAN.	

*IN ERROR TO THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.*

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This case presents a single clear-cut question—whether section 19 of the Criminal Code, formerly section 5508 of the Revised Statutes, safeguards against conspiracy the right of qualified electors, citizens of the United States, not only to cast their ballots for Members of Congress but to have those ballots counted.

Defendants were indicted on January 18, 1913, in the District Court for the Western District of Oklahoma, for violating section 19 of the Criminal Code. That section provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen

in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

The indictment contained four counts. The first count in substance charged:

That the defendants, who were officers and a majority of the county election board of Blaine County, Okla., for the election held on November 5, 1912, wilfully and corruptly conspired to injure and oppress certain legally qualified electors of that county, citizens of the United States, comprising all the qualified voters of eleven townships and precincts of the county, in the free exercise of their right and privilege, secured to them by the Constitution and laws of the United States, of voting and exercising the right of suffrage in the election of a duly qualified person as Member of Congress at that election; and agreed, for the purposes of this conspiracy not to return or certify to the State election board the returns and results of the votes cast for Member of Congress in these eleven precincts but wholly to omit

such returns from the certificate of the election in Blaine County to be thereafter made and certified by them to the State election board. (R., 3-13.)

The second count, in addition to the allegations of the first, charged an overt act done in pursuance of the conspiracy: That defendants, as the majority of the county election board, without the knowledge or consent of the third member thereof, held a secret meeting of the board, at which they prepared and transmitted to the State election board a return and certificate of the congressional election in Blaine County and wilfully omitted therefrom all returns from the eleven precincts before mentioned. (R., 13, 22-25.)

The third count is like the first, except that it includes, as part of the conspiracy, a plan to call a meeting of the county election board, at which the third member, one Broady, should be present, and to prepare and sign at that meeting a certificate of the result of the entire congressional vote cast in the county; to retain possession of this honest certificate and thereafter, at the secret meeting and in Broady's absence, to prepare and return in its stead the false certificate from which all returns from these eleven precincts were omitted. (R., 25, 33-35.)

The fourth count is identical with the first, with the single exception that the offense is described as a conspiracy to injure and oppress certain qualified electors, citizens of the United States, "for and on account of" the latter "having * * * exercised a right and privilege secured to them * * * by

the Constitution and laws of the United States, to wit, the right and privilege of casting their ballots at said election for such Member of Congress * * * and causing their said ballots * * * to be placed and deposited in the legal and proper ballot boxes in said precincts * * *.” (R., 35, 42-45.)

The defendants demurred to the indictment. (R., 46.)

The court sustained the demurrer—

upon the ground that section nineteen (19) of the Penal Code is held by the Court not to apply or extend to the acts and doings charged against the defendants in any count of said indictment. (R., 47.)

The United States duly excepted (*id.*) and brings the case here under the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246. While the record contains no opinion by the court below, the reason assigned for sustaining the demurrer clearly shows that its decision was based upon, and necessarily involved, the “construction of the statute upon which the indictment is founded.”

There are 16 assignments of error, all of which, however, relate to the court’s judgment sustaining the demurrer and its construction of section 19 of the Criminal Code. (R., 49-50.)

As nothing appears in the record with regard to the race or color of the persons whom the defendants conspired to disfranchise, no question under the Fifteenth Amendment of the Constitution is here involved.

SPECIFICATION OF ERROR.

The court below erred in holding that section 19 of the Criminal Code did not apply to the acts of the defendants charged in the indictment.

BRIEF OF ARGUMENT.

I. The following propositions are no longer open to question in this court:

- (a) That Congress may, by appropriate legislation, protect any right secured by the Constitution.
- (b) That the right of suffrage in the election of Members of Congress is such a right.
- (c) That this right is protected by section 19 of the Criminal Code.
- (d) That section 19 is constitutional.

II. The right of suffrage secured by the Constitution consists not merely of the right to cast a ballot, but likewise of the right to have that ballot counted.

- (a) The right in question arises equally from the second and fourth sections of Article I of the Constitution.
- (b) Upon whichever section it depends, it must include the right to have the vote counted.

III. Any conspiracy to interfere with or prevent the free exercise or enjoyment of the constitutional right of suffrage is in violation of section 19 of the Criminal Code.

- (a) The terms of the statute.
- (b) Its purpose.
- (c) Contemporary and subsequent legislation.

ARGUMENT.

I.

The following propositions are no longer open to question in this court:

(a) "That Congress may, by appropriate legislation, protect any right or privilege arising from, created or secured by, or dependent upon, the Constitution * * * of the United States."

United States v. Reese, 92 U. S. 214, 217.

Strauder v. West Virginia, 100 U. S. 303, 310.

Ex parte Virginia, 100 U. S. 339, 345.

Ex parte Yarbrough, 110 U. S. 651, 663.

Logan v. United States, 144 U. S. 263, 293.

Hodges v. United States, 203 U. S. 1, 24.

(b) That the right of suffrage in the election of Members of Congress is such a right.

Ex parte Yarbrough, *supra*.

Wiley v. Sinkler, 179 U. S. 58.

Swafford v. Templeton, 185 U. S. 487.

Felix v. United States (C. C. A., 5th C.), 186 Fed. 685, 688.

(c) That this right, together with others thus created or secured, is protected by section 19 of the Criminal Code.

Ex parte Yarbrough, *supra*, 657.

Felix v. United States, *supra*; see *Hodges v. United States*, *supra*, 24.

(d) Consequently, that section 19, both generally and in its application to the elective franchise, is constitutional.

Ex parte Yarbrough.

Logan v. United States, *supra*.

United States v. Waddell, 112 U. S. 76.

Motes v. United States, 178 U. S. 458.

It is significant that the assertion, in *Ex parte Yarbrough*, of the constitutionality of section 19 is based mainly upon a discussion of this right of voting for Members of Congress. While in that case the court was not called upon to decide that the section was designed to protect this right, it expressed in no uncertain terms its conviction that such was the intended scope of the statute. (110 U. S. 657.) Indeed, this conclusion follows of necessity, as well from the point there decided that this right was among those secured by the Constitution, as from the origin of the section as part of the "Enforcement Act" of May 31, 1870, 16 Stat. 140, 141, entitled:

An act to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes.

The only question left for our immediate solution, therefore, relates to the extent of this Federal right of suffrage protected by section 19.

Since this section refers in terms to "any right or privilege secured * * * by the Constitution" without enumerating or defining those rights and privileges, it is obviously essential, in approaching this problem of statutory construction, that we turn first of all to the Constitution in order to determine the extent and nature of the right which that instrument secures.

II.

The right of suffrage secured by the Constitution consists not merely of the right to cast a ballot but likewise of the right to have that ballot counted.

The contention of defendants that the right thus conferred has not this scope, but is a mere privilege of depositing a ballot in a designated receptacle, and ends with the completion of that act regardless of its consequences, is a proposition sufficiently remarkable upon its face to warrant a close and skeptical analysis.

In testing this brave assertion, then, let us first examine the specific sources of the right in the fundamental law.

The right of voting for Members of Congress is nowhere declared or created in express terms by the Constitution. Its existence has been inferred from the portions of that document which deal with the election of Members of Congress, as an essential corollary to those provisions and their effective exercise.

These provisions are section 2 of Article I, providing that:

The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State legislature.

And section 4 of that Article, which declares:

The times, places, and manner of holding elections for Senators and Representatives shall

be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

In this connection we contend:

(a) That the right in question arises equally from these two sections.

(b) That upon whichever section it depends it must include the right to have the vote counted.

(a) The power conferred on Congress by section 4 to regulate "the times, places, and manner" of electing Representatives is as important a source of the voting privilege as is the mandate of section 2, that the Members shall be chosen by the people of the several States. *Ex parte Yarbrough* seems to base the right equally on the two sections. (110 U. S. 660-664.) While section 2 deals primarily with the qualifications of persons who shall possess the voting privilege, section 4 supplies the means for insuring its unobstructed exercise. In the absence of explicit definition of a right, the remedy provided for its infringement may well be regarded in ascertaining its scope.

It may be urged as an objection to this course of reasoning that section 2 creates the right of the *voter*, whereas section 4 is concerned solely with the right of the *government* to protect itself against force and fraud in the selection of its instruments.

If the validity of this distinction were conceded, it would not undermine our position. The two rights

so defined are complementary, if not actually coextensive. The right of the individual is not solely, nor primarily, a personal privilege. It is predicated upon the necessity, under a democratic form of government, for a free expression of the people's will, not in the interest of the voters alone, but of all the people and the government which represents them. If this truth, which ought to be self-evident, requires demonstration, it is found in the fact that the right to vote is not an inherent attribute or a "necessary privilege" of United States citizenship, but attaches only to those upon whom the State in its discretion has chosen to confer it.¹ *Minor v. Happersett*, 21 Wall. 162, 170-178; *Pope v. Williams*, 193 U. S. 621, 632. The Federal Constitution extends the right thus created to congressional elections, and protects the extension; it neither originates the right nor confers it upon citizens of the United States as such. These principles are highly inconsistent with the notion that the Constitution maintains two distinct and separate rights, the individual and the governmental, that each of these exists independent of the other, and is to be determined without reference to the other's extent.

Even on the basis of this distinction, therefore, section 4 and section 2 stand as the dual source of the right to vote.

¹ Consideration of the Fourteenth and Fifteenth Amendments as restrictions upon State action is purposely omitted as not pertinent to the present discussion.

(b) As this court has frequently decided, the authority of Congress under section 4 to regulate elections includes the power to provide against the perpetration of election frauds (such as the failure to make proper returns) by the local election officers of the State.

Ex parte Siebold, 100 U. S. 371 (stuffing ballot box).

Ex parte Clarke, 100 U. S. 399 (failure to convey sealed ballot box to county clerk).

In re Coy, 127 U. S. 731 (failure as to safe-keeping and delivery of poll books, certificates, and tally sheets).

United States v. Gale, 109 U. S. 65 (stuffing ballot box and abstracting votes therefrom).

Nor are such regulations open to the objection that they operate upon State officers not amenable to the Federal Government, and impose punishment for a mere violation of State law. In *Ex parte Siebold*, *supra*, at 388, the court in discussing this objection said:

* * * It is the duty of the States to elect representatives to Congress. The due and fair election of these representatives is of vital importance to the United States. The Government of the United States is no less concerned in the transaction than the State government is. It certainly is not bound to stand by as a passive spectator, when duties are violated and outrageous frauds are committed. It is directly interested in the faithful performance, by the officers of election, of their respective duties. Those duties are owed as

well to the United States as to the State. This necessarily follows from the mixed character of the transaction, State and national. A violation of duty is an offence against the United States, for which the offender is justly amenable to that government. No official position can shelter him from this responsibility. In view of the fact that Congress has plenary and paramount jurisdiction over the whole subject, it seems almost absurd to say that an officer who receives or has custody of the ballots given for a representative owes no duty to the national government which Congress can enforce; or that an officer who stuffs the ballot-box cannot be made amenable to the United States. * * * It is true that Congress has not deemed it necessary to interfere with the duties of the ordinary officers of election, but has been content to leave them as prescribed by State laws. It has only created additional sanctions for their performance, and provided means of supervision in order more effectually to secure such performance. The imposition of punishment implies a prohibition of the act punished. The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress. It simply demands their fulfillment. Content to leave the laws as they are, it is not content with the means provided for their enforcement. It provides additional means for that purpose; and we think it is entirely within its constitutional power to do so. It is simply the exercise of the power to make additional regulations.

If the control of elections by Congress is to be more than nominal, the conclusion reached in these cases is inevitable. Election frauds are no less inimical to the selection of Representatives by an untrammelled expression of the voter's will than are acts of violence directed against his person, or a bald refusal to permit him to mark his ballot or place it in the box.

It follows that the privilege arising from the Constitution, so far as dependent upon section 4, is a right to register an *effective* voice in the selection of a Representative.

Even if the right in question rested wholly on section 2, however, the same inference must needs be drawn. That section declares that members are to be *chosen* by the people of the several States. It says nothing about voting by ballot. That is merely the machinery adopted for registering the popular choice; it is not the substance of the right, however essential it may be to its exercise. An election by popular acclaim, if practicable, would be a choice by the people so far as the language of section 2 is concerned.

In short, the right created by section 2 is substantial, and not a mere matter of form. It must therefore include something more than the bare right of casting a ballot. For surely the choice of a Representative involves the expression of that choice, not simply its utterance *in vacuo*.

Quite aside from the strict language of either section, it is perfectly apparent that the existence of a

right to vote entails of necessity the right to have that vote recorded; otherwise the vote cast is no vote at all, but simply so much waste paper. A constitutional guaranty of such significance as this should not be frittered away by a process of hair-splitting definition.

Having thus defined the right arising from the Constitution, it remains to discover to what extent that right is protected by section 19 of the Criminal Code.

III.

Any conspiracy to interfere with or prevent the free exercise or enjoyment of the constitutional right of suffrage is in violation of section 19 of the Criminal Code.

(a) *The terms of the statute.*

The language of the section is sweeping. "The free exercise or enjoyment of any right * * * secured * * * by the Constitution or laws of the United States" is the express object of its sanction. When applied to the elective franchise the natural inference is that it was designed to prevent *any* act whereby the complete exercise of that privilege might be prevented or impeded, and not merely attacks or threats directed against the voter's person.

In *United States v. Waddell, supra*, at page 80, this court said:

The right here guaranteed is not the mere right of protection against personal violence.

This, if the result of an ordinary quarrel or malice, would be cognizable under the laws of the State and by its courts. But it is something different from that. It is the right to remain on the land in order to perform the requirements of the act of Congress, and, according to its rules, perfect his incipient title.

Whenever the acts complained of are of a character to prevent this, or throw obstruction in the way of exercising this right, and for the purpose and with intent to prevent it, or to injure or oppress a person because he has exercised it, then, because it is a right asserted under the law of the United States and granted by that law, those acts come within the purview of the statute and of the constitutional power of Congress to make such statute.

The distinction between acts of violence and more peaceable means of prevention was not before the court in the *Waddell* case, which presented ample evidence of the former mode of persuasion. The passage quoted, however, is clearly indicative of the gist of the offense created by the statute, and suggests the immateriality of the method employed to attain the prohibited end.

In *United States v. Morris* (D. C. Ark.), 125 Fed. 322, 331, neither threats, intimidation, nor violence were alleged, and the court in sustaining the indictment defined the offense in much the same terms as did this court in the *Waddell* case.

In fact, it may safely be asserted that no reported case has ever held employment of force or intimidation essential to an offense under this section.

The authorities, therefore, furnish no ground for the contention that the words "injure, oppress, threaten, or intimidate" should be taken to refer solely to deeds of actual or threatened violence, or that the deprivation of the right to vote by throwing out the votes cast, refusing to count or return them, or other equally peaceable means is not an injury or an oppression of the voter.

Neither does the phraseology in question lend itself to that strained construction. The words "injure" and "oppress" in particular can not be thus narrowly defined. Even the requirement that a penal statute be strictly construed does not require a distortion of its simple and apparent meaning. And clearly, the effectual disfranchisement of a qualified elector "injures and oppresses" him in the exercise of his constitutional privilege. As the District Court of Maryland aptly remarked in *United States v. Stone*, 188 Fed. 836, 840:

Unlawfully to deprive a citizen of the United States of his right to vote at a congressional election is to injure him in any ordinary use of the word "injure." (Citing *United States v. Waddell*, *supra*.)

In the last cited case the defendants, county supervisors of election, were indicted under section 19 for conspiring to deprive colored citizens of the United States of their right to vote for Members of Congress, by having the ballots so printed and folded that anyone could easily vote one ticket, but an illiterate voter could with difficulty, if at all,

vote for a candidate on the opposing ticket. Upon demurrer to the indictment the court held that an offense under section 19 was stated.

The bearing of this decision upon the case at bar is obvious. It involves three propositions: (1) That voting, as a constitutional privilege, is not only a physical act, but the expression of the voter's choice; (2) that this right of expression is protected by section 19; (3) that a deprivation of that right, whatever the means employed, is within the section. If these conclusions be sound, they are determinative of the present case.

The language of this court in *Ex parte Yarbrough* also suggests that an attempt by fraud to interfere with the exercise of this right is as much within section 19 as a forcible interference. (110 U. S. 657-658, 662-663, 666-667.)

(b) *Its purpose.*

The enactment of the section must be regarded as in part at least an exercise by Congress of the plenary power of regulation conferred on it by Article I, section 4, of the Constitution. (See *Ex parte Yarbrough*, *supra*.) In view of its origin, it seems clear that the ultimate object of its adoption was quite as much the regular and lawful election of Representatives as the personal security of those voting.

The interpretation for which we contend is therefore inevitable. This statute would be but an inefficient instrument to this great end if it forbade interference with the registration of the voter's will

by blows, threats, or intimidation, but permitted such obstruction by the safer and surer method of neglecting to return his vote. The great superiority of this simple device over a crude resort to physical force is well illustrated by the present case, where two men disfranchised 11 townships in a single county. It is inconceivable that Congress intended to prohibit the lesser of these two evils while allowing the greater to flourish unmolested.

When section 19 of the Criminal Code was first enacted as section 6 of the Enforcement Act of 1870, perhaps the chief danger within the purview of Congress was forcible invasion of the rights of colored citizens at the polls. Perhaps the section was framed primarily to meet this danger. It does not follow that to-day, when this particular peril is happily past, the section should be restricted to acts of lawless violence any more than it is restricted to the rights of the negro voter. (*Felix v. United States*, *supra*; see *Ex parte Yarbrough*, *supra*.) The section was wisely drawn to meet a variety of contingencies, as well as to protect a variety of rights. A close analogy is found in the Fourteenth Amendment to the Constitution, which doubtless came into being largely to prevent oppression of the colored race. (*Slaughter House Cases*, 16 Wall. 36, 70-73; *Strauder v. W. Va.*, *supra*, 306-307; *Va. v. Rives*, 100 U. S. 313, 317-318.) Yet few would have the hardihood to urge any such restricted application of that amendment to-day.

The form of injury or oppression must, in the nature of things, depend largely upon the character of

the right which is invaded. The right to perfect a homestead entry, to give information of the violation of Federal law, or while in the custody of a United States Marshal to be protected against lawless violence (*United States v. Waddell, supra; In re Quarles*, 158 U. S. 532; *Motes v. United States, supra; Logan v. United States, supra*),—these are rights whose exercise can hardly be prevented except *vi et armis*. It needs no argument to show that the right of suffrage, particularly under modern conditions, does not come within this category.

Methods change with changing conditions—a fact doubtless recognized by the framers of section 6 of the Enforcement Act. Whatever the situation in 1870, if the utter violation of a right guaranteed by the Constitution does not injure or oppress its possessor unless accompanied by a blow over the head, the protection afforded by the statute is largely illusory at the present day.

(c) *Contemporary and subsequent legislation.*

In answer to this argument it may be suggested that the overt act alleged in the present indictment was specifically prohibited by section 22 of the Enforcement Act, later section 5515 of the Revised Statutes; that therefore Congress, in adopting that act, could not have intended section 6 thereof (later section 5508 of the Revised Statutes and now section 19 of the Criminal Code) to cover the present offense; and that when Congress by the act of February 8, 1894 (28 Stat. 36), repealed section

5515, R. S., together with other portions of the Enforcement Act, its purpose was to withdraw from Federal cognizance *all* frauds upon the elective franchise, particularly those which came within the repealed sections.

It would be a sufficient reply to this contention to point out that a single act may well be a violation of two or more sections of the same statute and so come within the specific provisions of section 5515, Revised Statutes, as well as the terms of section 5508, Revised Statutes (now 19 of the Criminal Code); and that whatever Congress had in mind in repealing section 5515 it did not repeal section 5508, which operates with unabated force and is to be construed as though the repealing act had never been adopted.

But an even more conclusive reply is to be found in the patent fact that the two sections are not *in pari materia*; that the offenses described and denounced in them, respectively, are different and distinct and the repeal of section 5515 therefore could have no bearing upon the section which was undisturbed. A moment's reflection will make this clear.

We quote section 5515 in full:

Every officer of an election at which any Representative or Delegate in Congress is voted for, whether such officer of election be appointed or created by or under any law or authority of the United States, or by or under any State, Territorial, district, or municipal law or authority, who neglects or refuses to perform any duty in regard to such election

required of him by any law of the United States, or of any State or Territory thereof; or who violates any duty so imposed; or who knowingly does any acts thereby unauthorized, with intent to affect any such election, or the result thereof; or who fraudulently makes any false certificate of the result of such election in regard to such Representative or Delegate; or who withholds, conceals, or destroys any certificate of record so required by law respecting the election of any such Representative or Delegate; or who neglects or refuses to make and return such certificate as required by law; or who aids, counsels, procures, or advises any voter, person, or officer to do any act by this or any of the preceding sections made a crime, or to omit to do any duty the omission of which is by this or any of such sections made a crime, or attempts to do so, shall be punished as prescribed in section fifty-five hundred and (*ten*) (eleven).

It will be observed that this section penalizes certain acts or omissions committed by individual election officers.

Section 19 of the Criminal Code (R. S., sec. 5508) is directed to a *conspiracy* of two or more persons, who may or may not be election officers, to injure, oppress, threaten, or intimidate any citizen, etc., and "the crime is made to consist in the unlawful combination with an intent to prevent the enjoyment of any right granted or secured by the Constitution," etc. (*United States v. Cruikshank*, 92 U. S. 542-559.)

The conspiracy to commit the offense is the gist of the criminality under this section. (Cf. *Pettibone v. United States*, 148 U. S. 197-202.) Unlike the later section with reference to conspiracies against the United States, Revised Statutes, section 5440—Criminal Code, section 37—it does not in terms require an overt act to complete the offense, and hence no overt act need be alleged; it is sufficient if two or more persons conspire to the unlawful end. (*Smith v. United States* (C. C. A., 8th C.), 157 Fed. 721, 725; *United States v. Goldman* (C. C.), 3 Woods, 187, 191; *United States v. Crosby* (C. C.), 1 Hughes, 448.) The contemplated wrong assumes a formidable or aggravated character when the end in view is to be effected by the powers of the combination. (*Callan v. Wilson*, 127 U. S. 540, 555-6.)

As this court said in *Clune v. United States*, 159 U. S. 590, 595:

A conspiracy to commit an offence is denounced as itself a separate offence, and the punishment therefor fixed by the statute, and we know of no lack of power in Congress thus to deal with a conspiracy. Whatever may be thought of the wisdom or propriety of a statute making a conspiracy to do an act punishable more severely than the doing of the act itself, it is a matter to be considered solely by the legislative body. The power exists to separate the conspiracy from the act itself and to affix distinct and independent penalties to each.

It can not therefore be said that because Congress repealed a statute penalizing an election officer "who fraudulently makes any false certificate of the result of such election in regard to such Representative or Delegate," it thereby nullified by implication an act penalizing two or more persons who conspired by such means to injure or oppress a citizen in the free exercise of his constitutional right.

The distinction suggested may be happily illustrated by a consideration of other sections of the Criminal Code. Section 21, for instance, provides:

If two or more persons in any State, Territory, or District *conspire* to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

Following this section we have section 62, which imposes a penalty upon whomever—

shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer or employee of the Bureau of Animal Industry of the Department of Agriculture in the execution of his duties, or on account of the execution of his duties.

Also section 65, which penalizes whomever “shall forcibly assault, resist, oppose, prevent, impede, or interfere with any officer of the customs or of the internal revenue,” etc.; and section 140, which imposes a penalty upon whomever—

shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States Commissioner, or shall assault, beat, or wound any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, etc.

If Congress should repeal sections 62, 65, and 140 of the Criminal Code, could it be pretended that such an act by necessary implication repealed or modified section 21, and that an indictment would not lie under section 21 against those who conspired to prevent an

officer from discharging his duties even though the officer and the method of prevention contemplated might be the same as those described in sections 62, 65, or 140?

The act of February 8, 1894, 28 Stat. 36, exhibits no intention to remove all election frauds from Federal control. It was designed, as its title indicates, "to repeal all statutes relating to supervisors of elections and special deputy marshals, and for other purposes."

These "other purposes" doubtless include restoring to the States in large part the exclusive regulation and control of the election machinery. More particularly, the repeal of sections 2008 (wrongfully refusing to receive a vote), 2009 (unlawfully hindering a person from voting), 5506 (preventing citizens from qualifying to vote or from voting), 5511 (fraudulent voting, etc.), 5512 (fraudulent registration, etc.), and 5515 (violation of duty by officers of election), was probably intended to relieve individual offenders from the penalties thereby imposed for offenses which in the view of the majority at that time were adequately punishable under State law. (Cōng. Rec., vol. 25, pt. 2, p. 1808; *idem*, 26, pt. 1, p. 382.)

It does not follow, however, that Congress intended to do more than this, or to permit conspiracies to defraud the voter of his constitutional right to go unpunished by Federal law.

CONCLUSION.

The conspiracy alleged in the indictment was one to injure and oppress citizens in the free exercise or enjoyment of a right secured to them by the Constitution and laws of the United States, and so came within the prohibition of section 19 of the Criminal Code.

The judgment of the court below sustaining a demurrer to the indictment was therefore erroneous and should be reversed.

JOHN W. DAVIS,
Solicitor General.

SEPTEMBER, 1913.

